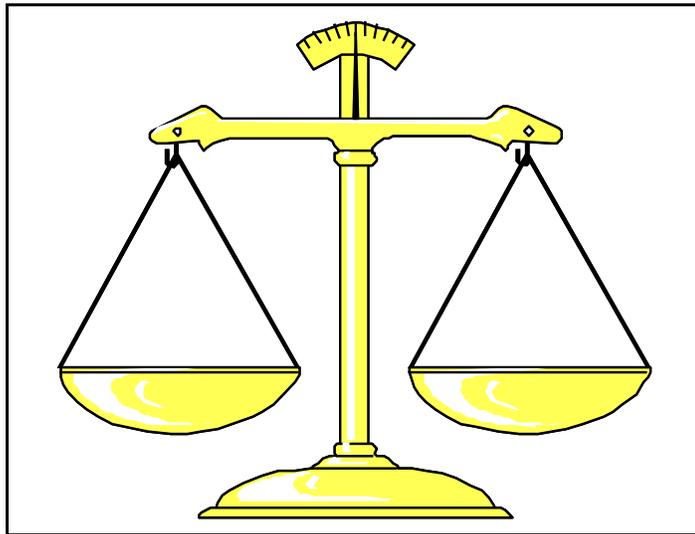


**NORTH CAROLINA  
SENTENCING  
AND  
POLICY ADVISORY  
COMMISSION**



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

***SUBMITTED TO THE 2015 SESSION OF THE  
NORTH CAROLINA GENERAL ASSEMBLY  
APRIL 2015***

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**P.O. Box 2448  
Raleigh, NC 27602  
(919) 890-1470**

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY  
COMMISSION**

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

This report by the Sentencing Commission includes all bills introduced or amended through April 23, 2015. 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). Unless otherwise noted, the impact estimates assume an effective date of December 1, 2015.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on March 6 and April 24, 2015.

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

## **THE OFFENSE CLASSIFICATION CRITERIA**

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

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria. The Commission did not apply the classification criteria to homicide and controlled substances offenses.

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

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

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

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

## FELONY OFFENSE CLASSIFICATION CRITERIA\*

### CLASS CRITERIA

- A**       • Reserved for First Degree Murder
- [Reasonably tends to result or does result in:]*
- B**       • Serious debilitating long-term personal injury
- C**       • Serious long-term personal injury  
• Serious long-term or widespread societal injury
- D**       • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling
- E**       • Serious personal injury
- F**       • Significant personal injury  
• Serious societal injury
- G**       • Serious property loss  
            Loss from the person or the person's dwelling
- H**       • Serious property loss:  
            Loss from any structure designed to house or secure any activity or property  
            Loss occasioned by the taking or removing of property  
            Loss occasioned by breach of trust, formal or informal  
• Personal injury  
• Significant societal injury
- I**       • Serious property loss:  
            All other felonious property loss  
• Societal injury
- M**       • All other misdemeanors

---

\* Personal injury includes both physical and mental injury.

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

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

## HOMICIDE OFFENSE CLASSIFICATION CRITERIA

### CLASS CRITERIA

#### (FELONY)

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

#### (MISDEMEANOR)

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION  
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS  
APRIL 24, 2015**

| <b>Bill</b>               | <b>Short Title</b>                          | <b>Provision</b>   | <b>Proposed Offense Class</b> | <b>Finding</b>          | <b>Commentary</b>  | <b>Page</b> |
|---------------------------|---|--|-------------------------------|-------------------------|--|-------------|
| HB 32<br>[Ed.2]           | Amend Habitual DWI                          | 20-138.5   | F                             | Not Applicable          | DWI offenses are not classified under Structured Sentencing. | 1           |
| HB 39/<br>SB 75<br>[Ed.1] | Labor/Up Amusement Device Penalties         | 95-111.13(j)-<br>Causes injury   | E                             | Consistent              |  | 3           |
|                           |   | 95-111.13(j)-<br>Causes death  | E                             | Consistent              | Would also be consistent with a Class F felony.              | 4           |
| HB 113<br>[Ed.1]          | Protect Our Students Act                    | 14-27.7(b)   | I                             | Inconsistent            | Would be consistent with a Class H felony.                   | 7           |
|                           |   | 14-202.4(a)  | H                             | Consistent              |  | 8           |
|                           |   | 14-202.4(b)  | I                             | Inconsistent            | Would be consistent with a Class H felony.                   | 9           |
| HB 208<br>[Ed.1]          | Create Department of Information Technology | 143B-1320- Persons with financial interest in the purchase of contract | F                             | Consistent              |  | 12          |
|                           |   | 143B-1320- Persons with beneficial interest in the firm furnishing IT  | F                             | Consistent              |  | 13          |
|                           |   | 143B-1320- Acceptance of bribes  | F                             | Consistent              |  | 14          |
| HB 271<br>[Ed.1]          | Amend Dangerous Dog Law                     | 143B-1321  | I                             | Consistent              |  | 15          |
|                           |   | 67-4.3(a)  | I                             | Inconsistent            | Would be consistent with a Class H felony.                   | 16          |
| HB 287<br>[Ed.2]          | Amend Insurance Laws- AB                    | 67-4.3(b)  | F                             | Consistent <sup>1</sup> |  | 17          |
|                           |   | 58-50-40   | C                             | Inconsistent            | Would be consistent with a Class H felony.                   | 18          |

<sup>1</sup> Homicide Offense Classification Criteria

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

| <b>Bill</b>      | <b>Short Title</b>                                 | <b>Provision</b> | <b>Proposed Offense Class</b> | <b>Finding</b> | <b>Commentary</b>   | <b>Page</b> |
|------------------|--|------------------|-------------------------------|----------------|---|-------------|
| HB 294<br>[Ed.2] | Prohibit Cell Phone/<br>Delinquent Juvenile- AB    | 14-258.1 (d)     | H                             | Consistent     |   | 19          |
|                  |  | 14-100.1(e)      | G                             | Inconsistent   | Would be consistent with a Class I felony.  | 20          |
|                  |  | 20-30(a)(1)      | G                             | Inconsistent   | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 or 2 misdemeanor.     | 21          |
|                  |  | 20-30(a)(2)      | G                             | Inconsistent   | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 or 2 misdemeanor.     | 22          |
|                  |  | 20-30(a)(3)      | G                             | Inconsistent   | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 or 2 misdemeanor.     | 23          |
|                  |  | 20-30(a)(4)      | G                             | Inconsistent   | May be consistent with a Class 1 or 2 misdemeanor.  | 24          |
| HB 328<br>[Ed.2] | Highway Safety/Citizens<br>Protection Act          | 20-30(a)(5)      | G                             | Inconsistent   | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 misdemeanor.          | 25          |
|                  |  | 20-30(a)(6)      | G                             | Inconsistent   | May be consistent with a Class 2 or 3 misdemeanor.  | 26          |
|                  |  | 20-30(a)(7)      | G                             | Inconsistent   | Would be consistent with a Class I felony.  | 27          |
|                  |  | 20-30(a)(8)      | G                             | Inconsistent   | May be consistent with a Class 1 or 2 misdemeanor.  | 28          |
|                  |  | 20-30(a)(9)      | G                             | Inconsistent   | Would be consistent with a Class H or I felony.   | 29          |
|                  |  | 20-30(a)(10)     | G                             | Inconsistent   | Would be consistent with a Class I felony.  | 30          |
| HB 449<br>[Ed.1] | Strengthen Law<br>Enforcement Access/DV<br>Crimes  | 14-33.2          | H                             | Inconsistent   | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 34          |
| HB 552<br>[Ed.3] | Graffiti Vandalism                                 | 14-127.1         | H                             | Inconsistent   | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 35          |
| HB 554<br>[Ed.1] | Protect Public from<br>Dangerous Wild<br>Animals   | 19A-77(b)        | I                             | Inconsistent   | Would be consistent with a Class F or H felony.   | 39          |
| HB 560<br>[Ed.1] | Assault Emergency<br>Workers/Hospital<br>Personnel | 14-34.6(a)       | I                             | Consistent     |   | 40          |
|                  |  | 14-34.6(b)       | H                             | Consistent     |   | 41          |
|                  |  | 14-34.6(c)       | F                             | Consistent     |   | 42          |

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

| <b>Bill</b>      | <b>Short Title</b>                           | <b>Provision</b>                                       | <b>Proposed Offense Class</b> | <b>Finding</b> | <b>Commentary</b>   | <b>Page</b> |
|------------------|--|--|-------------------------------|----------------|---|-------------|
| HB 565<br>[Ed.1] | Threaten LEO or Correctional Officer         | 14-277.6(a)  | I                             | Inconsistent   | May be consistent with a Class I misdemeanor.   | 46          |
|                  |  | 14-277.6(b)  | I                             | Inconsistent   | May be consistent with a Class I misdemeanor.   | 47          |
| HB 611<br>[Ed.1] | Enact Death with Dignity Act                 | 90-325.18(a)   | A                             | Inconsistent   |   | 50          |
|                  |  | 90-325.18(b)   | A                             | Inconsistent   |   | 51          |
|                  |  | 90-325.21(b)   | A                             | Inconsistent   |   | 52          |
| HB 626<br>[Ed.1] | Amend Prop Damage Offenses                   | 14-160(b)(2)   | I                             | Consistent     |   | 53          |
|                  |  | 14-160(b)(3)   | F                             | Inconsistent   | Would be consistent with a Class H felony.  | 54          |
|                  |  | 14-127(3)  | I                             | Consistent     |   | 55          |
|                  |  | 14-127(4)  | F                             | Inconsistent   | Would be consistent with a Class G felony.  | 56          |
| HB 627<br>[Ed.1] | Fight Financial Transaction Card Fraud       | 14-113.17(a)   | I                             | Inconsistent   | May be consistent with a Class I misdemeanor.   | 57          |
|                  |  | 14-113.17(b)   | G                             | Inconsistent   | Would be consistent with a Class H or I felony.   | 58          |
| HB 691<br>[Ed.1] | Assault on National Guard Member             | 14-34.6(a)   | I                             | Consistent     |   | 62          |
|                  |  | 14-34.6(b)   | H                             | Consistent     |   | 63          |
|                  |  | 14-34.6(c)   | F                             | Consistent     |   | 64          |
| HB 699<br>[Ed.1] | Gun Rights and Privacy Act                   | 14-415.35  | H                             | Inconsistent   | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 68          |
| HB 711<br>[Ed.2] | Prohibit Counterfeit/ Nonfunctional Air Bags | 20-136.2- install or reinstall                         | H                             | Consistent     |   | 69          |
|                  |  | 20-136.2- import, manufacture, sell, or offer for sale | H                             | Consistent     |   | 70          |
| HB 725<br>[Ed.1] | Gun Safety Act                               | 14-409.13  | I                             | Inconsistent   | The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 72          |

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

| <b>Bill</b>                       | <b>Short Title</b>                            | <b>Provision</b>   | <b>Proposed Offense Class</b> | <b>Finding</b>               | <b>Commentary</b>   | <b>Page</b> |
|-----------------------------------|---|--|-------------------------------|------------------------------|---|-------------|
| HB 725<br>[Ed.1]<br><i>cont'd</i> | Gun Safety Act                                | 14-409.91(b)   | I                             | Consistent                   |   | 73          |
| HB 792<br>[Ed.2]                  | Privacy/Protection From Revenge Postings      | 14-190.5A  | H                             | Inconsistent                 | Would be consistent with a Class I felony.  | 74          |
| HB 793<br>[Ed.1]                  | Privacy/ Up Secret Peeping Punishment         | 14-202(d)  | I                             | Consistent                   |   | 76          |
|                                   |   | 14-202(f)  | I                             | Consistent                   |   | 77          |
| HB 794<br>[Ed.1]                  | Protection from Online Impersonation          | 14-118.8   | H                             | Inconsistent                 | Would be consistent with a Class I felony.  | 79          |
| HB 801<br>[Ed.1]                  | Same Firearm Protections for 50C as 50B Order | 14-269.8(a1)   | H                             | Consistent                   |   | 80          |
| SB 83<br>[Ed.2]                   | Criminal Law/Filing False Document            | 14-401.26  | I                             | Consistent                   |   | 81          |
| SB 343<br>[Ed.1]                  | Student Assault on Teacher/Felony Offense     | 14-33.3- First offense<br>14-33.3- Second and subsequent offense | I<br>G                        | Inconsistent<br>Inconsistent | May be consistent with a Class A1 misdemeanor.<br>The felony punishment chart takes a defendant's prior record into account through the Prior Record Level. | 83<br>84    |
| SB 417<br>[Ed.1]                  | Habitual Impaired Driving/10-Year Period      | 20-138.5   | F                             | Not Applicable               | DWI offenses are not classified under Structured Sentencing.  | 85          |
| SB 418<br>[Ed.1]                  | Amend Statutory Rape/15 Years Old or Younger  | 14-27.7A(a)  | B1                            | Consistent                   |   | 87          |
|                                   |   | 14-27.7A(b)  | C                             | Consistent                   |   | 88          |
| SB 419<br>[Ed.1]                  | Limit Revolving Door Employment               | 143-59.5   | I                             | Consistent                   |   | 91          |
| SB 609<br>[Ed.1]                  | Mandate Use/Controlled Sub. Reporting System  | 90-113.74A   | I                             | Inconsistent                 |   | 93          |
|                                   |   | 74C-24(g)(1)   | H                             | Inconsistent                 | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 misdemeanor.  | 94          |
| SB 630<br>[Ed.1]                  | PI Access to Criminal Court Records           | 74C-24(g)(2)   | H                             | Inconsistent                 | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 misdemeanor.  | 95          |
|                                   |   | 74C-24(g)(3)   | H                             | Inconsistent                 | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 misdemeanor.  | 96          |
|                                   |   | 74C-24(g)(4)   | H                             | Inconsistent                 | Would be consistent with a Class I felony.<br>May also be consistent with a Class 1 misdemeanor.  | 97          |

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

| <b>Bill</b>      | <b>Short Title</b>                           | <b>Provision</b> | <b>Proposed Offense Class</b> | <b>Finding</b>          | <b>Commentary</b> | <b>Page</b> |
|------------------|--|------------------|-------------------------------|-------------------------|-------------------|-------------|
| SB 646<br>[Ed.1] | Unlawful to Assist Another to Commit Suicide | 14-17.2          | D                             | Consistent <sup>2</sup> |                   | 98          |
| SB 652<br>[Ed.1] | Prohibit Re-Homing of an Adopted Minor Child | 48-10-106(a)(1)  | F                             | Consistent              |                   | 99          |
|                  |  | 48-10-106(a)(2)  | F                             | Consistent              |                   | 100         |
|                  |  | 48-10-106(b)     | F                             | Consistent              |                   | 101         |
|                  |  | 48-10-106(c)     | F                             | Consistent              |                   | 102         |
|                  |  | 14-43.14         | F                             | Consistent              |                   | 103         |

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<sup>2</sup> Homicide Offense Classification Criteria

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



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

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

**BILL NUMBER/SHORT TITLE:** HB 32 – Amend Habitual DWI [Ed.2]

**STATUTE**

§ 20-138.5. Habitual impaired driving.

**DESCRIPTION**

A person who

1. drives while impaired (as defined in G.S. 20-138.1) and
2. has been convicted of two or more offenses involving impaired driving within 10 years of the date of this offense, or
3. has been previously convicted of the offense of habitual impaired driving.

**PROPOSED OFFENSE CLASS**

Class F felony.

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

**ANALYSIS**

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

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

The Sentencing Commission reviewed an identical provision in HB 31 on March 8, 2013 and found that the Offense Classification Criteria were not applicable because driving while impaired offenses are not classified under Structured Sentencing.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Driving While Impaired offenses are not classified under Structured Sentencing.

**DATE OF REVIEW:** 3/6/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 32: AMEND HABITUAL DWI**

***PREPARED: FEBRUARY 2, 2015***

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

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

In FY 2013/14, there were 289 convictions for habitual impaired driving under G.S. 20-138.5(a). Ninety-seven percent (n=280) received an active sentence with an average estimated time served of 17 months. This amendment would increase the eligible pool of offenders for habitual impaired driving. However, the Sentencing Commission does not maintain statistical information on misdemeanor impaired driving offenses, which form the basis for an habitual impaired driving conviction. In addition, while the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses that were used to calculate the number of prior record/conviction points. As a result, the Sentencing Commission does not have any data from which to estimate how many additional convictions would occur as a result of the proposed amendment.

Convictions under G.S. 20-138.5(a) carry a mandatory active sentence. It is not known how many additional convictions may result from the proposed broadening of the current statute. Based on FY 2013/14 data, if, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for two additional prison beds the first year and three additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence.

Effective December 1, 2015, and applies to offenses committed on or after that date. (It appears that qualifying prior convictions before December 1, 2015, may be used to establish the two requisite prior convictions, provided they occurred within 10 years of the current violation of G.S. 20-138.1.)

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 39/SB 75 – Labor/Up Amusement Device Penalties [Ed.1]

**STATUTE**

§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.

**DESCRIPTION**

Subsection (j):

A person who

1. causes serious injury
2. of any person
3. through the willful violation of
4. any provision of Article 14B, Amusement Device Safety Act, of Chapter 95 of the General Statutes.

**PROPOSED OFFENSE CLASS**

Class E Felony.

**ANALYSIS**

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

Article 14B of Chapter 95 of the General Statutes governs the set-up, inspection and operation of amusement park rides and games.

**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:** 3/6/15

**BILL CONTINUED ON NEXT PAGE**

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

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

**BILL NUMBER/SHORT TITLE:** HB 39/SB 75 – Labor/Up Amusement Device Penalties [Ed.1]  
(cont'd)

**STATUTE**

§ 95-111.13. Violations; civil penalties; appeal; criminal penalties.

**DESCRIPTION**

Subsection (j):

A person who

1. causes the death
2. of any person
3. through the willful violation of
4. any provision of Article 14B of Chapter 95 of the General Statutes.

**PROPOSED OFFENSE CLASS**

Class E felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

Other Class E felony homicides include: Culpably negligent patient abuse causing death (14-32.2(b)(2)), and Aggravated speeding to elude arrest causing death (20-141.5(a), (b1)).

Article 14B, the Amusement Device Safety Act, of Chapter 95 of the General Statutes governs the set-up, inspection and operation of amusement park, fair, etc. rides, games, and devices.

This conduct is currently covered by G.S. 95-111.13(i) which makes it a Class 2 misdemeanor for the first violation and a Class 1 misdemeanor for the second or subsequent violation.

**FINDINGS**

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

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

Homicide 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 recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence as Class F felonies.

**DATE OF REVIEW:** 3/6/15

**IMPACT ANALYSIS ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 39: LABOR/UP AMUSEMENT DEVICE PENALTIES**

*PREPARED: MARCH 16, 2015*

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

This bill creates one new felony provision, reclassifies some existing misdemeanor conduct into the new felony provision, and broadens the scope of the current misdemeanor.

This bill amends G.S. 95-111.13, Violations; civil penalties; appeal; criminal penalties, by adding subsection (j). This bill would make it a Class E felony for a person to willfully violate any provision of Article 14B of Chapter 95 of the General Statutes (Amusement Device Safety Act of North Carolina) and the violation causes the serious injury of any person.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 64% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two Class E convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, subsection (i) makes it a Class 2 misdemeanor for the first conviction, and a Class 1 misdemeanor for all subsequent violations, for a person to willfully violate any provision of this Article and the violation causes the death of any person. This bill would reclassify this conduct to a Class E felony via subsection (j).

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 95-111.13. The lack of an 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 1 or Class 2 convictions become Class E convictions under the proposed reclassification of the current statute since Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days).

In FY 2013/14, 64% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two additional Class E convictions per year as a result of the proposed reclassification of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

This bill would also broaden the scope of the existing misdemeanor in subsection (i) by removing the requirement that the violation causes the death of a person; any violation of the article would be a Class 2 misdemeanor for the first violation and a Class 1 misdemeanor for all subsequent violations.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 95-111.13. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute, nor is known how many offenders may be repeat offenders under the proposed statute. 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. As a result, it is not known what proportion of offenders would be convicted as Class 2 (first offense) or Class 1 offenders (second or subsequent offense) under the proposed statute.

In FY 2013/14, 30% of Class 1 misdemeanor convictions and 33% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 37 days, and the average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, additional convictions that result from the proposed broadening of the current statute would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Effective December 1, 2015 and applies to violations occurring on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

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

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

**BILL NUMBER/SHORT TITLE:** HB 113 – Protect Our Students Act [Ed.1]

**STATUTE**

§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

**DESCRIPTION**

Subsection (b):

A person who

1. is school personnel other than a teacher, school administrator, student teacher, school safety officer, or coach, and
2. is less than four years older than the victim, and
3. engages in
  - a. vaginal intercourse, or
  - b. a sexual act
4. with a student.

**OFFENSE CLASS**

**CURRENT:** Class A1 misdemeanor.

**PROPOSED:** Class I felony.

**ANALYSIS**

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

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

**FINDINGS**

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

Bill is **inconsistent** with 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. 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.

**DATE OF REVIEW:** 3/6/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 113 – Protect Our Students Act [Ed.1] (cont'd)

**STATUTE**

§ 14-202.4. Taking indecent liberties with a student.

**DESCRIPTION**

Subsection (a):

A person who

1. a. is a teacher, school administrator, student teacher, school safety officer, or coach, of any age, or  
b. is other school personnel at least four years older than the victim
2. takes indecent liberties with a student
3. at any time during or after the time the defendant and victim were present together in the same school, but before the time the victim ceases to be a student.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class H felony.

**ANALYSIS**

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

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

A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

G.S. 14-202.1, Taking indecent liberties with children is a Class F felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 3/6/15

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

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

**BILL NUMBER/SHORT TITLE:** HB 113 – Protect Our Students Act [Ed.1] (cont'd)

**STATUTE**

§ 14-202.4. Taking indecent liberties with a student.

**DESCRIPTION**

Subsection (b):

A person who

1. is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and
2. is less than four years older than the victim,
3. takes indecent liberties with a student
4. at any time during or after the time the defendant and victim were present together in the same school, but before the time the victim ceases to be a student.

**OFFENSE CLASS**

**CURRENT:** Class A1 misdemeanor.

**PROPOSED:** Class I felony.

**ANALYSIS**

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

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

G.S. 14-202.1, Taking indecent liberties with children is a Class F felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 3/6/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 113: PROTECT OUR STUDENTS ACT**

*PREPARED: MARCH 2, 2015*

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

This bill reclassifies three existing offenses.

**SECTION 2.** G.S. 14-27.7, Intercourse and sexual offenses with certain victims; consent no defense, subsection (b) makes it unlawful for a defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim, to engage in vaginal intercourse or a sexual act with a victim who is a student. This Section reclassifies the offense from a Class A1 misdemeanor to a Class I felony.

In FY 2013/14, there were no Class A1 misdemeanor convictions under G.S. 14-27.7. Using threshold data, if nine convictions per year were reclassified from a Class A1 misdemeanor to a Class I felony, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**SECTION 3.** G.S. 14-202.4, Taking indecent liberties with a student, subsection (a) makes it unlawful for a defendant who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, to take indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student. This Section reclassifies the offense from a Class I felony to a Class H felony.

In FY 2013/14, there were three Class I felony convictions under G.S. 14-202.4. Due to the small number of convictions, a more detailed impact projection using the prison projection model would not be reliable. Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (16% for Class I compared to 35% for Class H) and longer average estimated time served (6 months compared to 10 months for Class H). Using threshold data, if nine convictions per year were reclassified from Class I to Class H, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for two additional prison beds the first year and two additional prison beds the second year.

**SECTION 4.** G.S. 14-202.4, Taking indecent liberties with a student, subsection (b) makes it unlawful for a defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, to take indecent liberties with a student at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student. This Section reclassifies the offense from a Class A1 misdemeanor to a Class I felony.

In FY 2013/14, there were no Class A1 misdemeanor convictions under G.S. 14-202.4. Using threshold data, if nine convictions per year were reclassified from a Class A1 misdemeanor to a Class I felony, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 208/SB 268 – Create Department of Information Technology [Ed.1]

**STATUTE**

§ 143B-1320. Financial interest of officers in sources of supply; acceptance of bribes.

**DESCRIPTION**

A person who

1. is the Secretary of Information Technology, any deputy secretary, or any other policy-making or managerially exempt personnel,
2. a. is financially interested, or  
b. receives any personal beneficial interest, directly or indirectly,
3. a. in the purchase of, or  
b. contract for
4. any information technology.

**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.

This bill creates the Department of Information Technology to ensure efficient and effective use of information technology operations, management and resources.

G.S. 143-63, Financial interest of officers in sources of supply; acceptance of bribes, provides that it shall be a Class F felony for the Secretary of Administration or any assistant of the Secretary's to be financially interested, or to have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies.

**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:** 4/24/15

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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 208/SB 268 – Create Department of Information Technology [Ed.1] (cont'd)

**STATUTE**

§ 143B-1320. Financial interest of officers in sources of supply; acceptance of bribes.

**DESCRIPTION**

A person who

1. is the Secretary of Information Technology, any deputy secretary, or any other policy-making or managerially exempt personnel, and
2. has any personal beneficial interest in
3. any firm, corporation, partnership or association,
4. furnishing any information technology to the State government, or any of its departments, institutions or agencies.

**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.

This bill creates the Department of Information Technology to ensure efficient and effective use of information technology operations, management and resources.

G.S. 143-63, Financial interest of officers in sources of supply; acceptance of bribes, provides that it shall be a Class F felony for the Secretary of Administration or any assistant of the Secretary's to be financially interested, or to have any personal beneficial interest in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies.

**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:** 4/24/15

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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 208/SB 268 – Create Department of Information Technology [Ed.1] (cont'd)

**STATUTE**

§ 143B-1320. Financial interest of officers in sources of supply; acceptance of bribes.

**DESCRIPTION**

A person who

1. is the Secretary of Information Technology, any deputy secretary, or any other policy-making or managerially exempt personnel, or any other Department employee, and
2. accepts or receives, directly or indirectly,
3. from any person, firm or corporation, to whom any contract may be awarded,
4. by rebate, gifts or otherwise,
5. any money or anything of value whatsoever, or
6. any promise, obligation, or contract for future reward or compensation.

**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.

This bill creates the Department of Information Technology to ensure efficient and effective use of information technology operations, management and resources.

G.S. 143-63, Financial interest of officers in sources of supply; acceptance of bribes, provides that it shall be a Class F felony for the Secretary of Administration or any assistant of the Secretary's, or any member of the Commission to accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation.

**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:** 4/24/15

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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 208/SB 268 – Create Department of Information Technology [Ed.1] (cont'd)

**STATUTE**

§ 143B-1321. Certification that information technology bid submitted without collusion.

**DESCRIPTION**

A person who

1. is a bidder on information technology contracts overseen by the Department, and who
2. falsely certifies that each bid is submitted competitively and without collusion.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

Punishment for making false statement is a Class I felony. G.S. 58-2-180.

Punishment for violation of the Administration of Employment Benefits provisions is a Class I felony. G.S. 96-18

**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:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 271 – Amend Dangerous Dog Law [Ed.1]

**STATUTE**

§ 67-4.3. Penalty for attacks by vicious or dangerous dogs.

**DESCRIPTION**

Subsection (a):

A person who

1. is the owner of a dog
  - a. previously determined to be vicious
  - b. that attacks a person, and
  - c. causes serious physical injury.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

G.S. 67-4.1(a)(7), defines a vicious dog as a dog that, without provocation has killed or inflicted severe injury on a person; or has already been determined a dangerous dog pursuant to G.S. 67-4.1(c) and is subsequently determined to have committed any “dangerous dog” acts; or any dog owned primarily for the purpose of dog fighting; or any dog trained for dog fighting.

G.S. 67-4.1(c) provides that the county or municipal authority responsible for animal control shall designate a person or Board to be responsible for determining when a dog is an at-risk dog, a dangerous, dog, or a vicious dog; a separate Board shall be designated to hear any appeal. The decision-maker must notify the owner of the determination in writing, giving reasons for the determination, before the dog may be considered at-risk, dangerous, or vicious.

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

**DATE OF REVIEW:** 4/24/15

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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 271 – Amend Dangerous Dog Law [Ed.1] (cont'd)

**STATUTE**

§ 67-4.3. Penalty for attacks by vicious or dangerous dogs.

**DESCRIPTION**

Subsection (b):

A person who

1. is the owner of a dog
  - a. previously determined to be vicious
  - b. that attacks a person, and
  - c. causes the victim's death.

**PROPOSED OFFENSE CLASS**

Class F felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence as Class F felonies.

G.S. 67-4.1(a)(7), defines a vicious dog as a dog that, without provocation has killed or inflicted severe injury on a person; or has already been determined a dangerous dog pursuant to G.S. 67-4.1(c) and is subsequently determined to have committed any "dangerous dog" acts; or any dog owned primarily for the purpose of dog fighting; or any dog trained for dog fighting.

G.S. 67-4.1(c) provides that the county or municipal authority responsible for animal control shall designate a person or Board to be responsible for determining when a dog is an at-risk dog, a dangerous, dog, or a vicious dog; a separate Board shall be designated to hear any appeal. The decision-maker must notify the owner of the determination in writing, giving reasons for the determination, before the dog may be considered at-risk, dangerous, or vicious.

Owning a dog previously determined to be dangerous that attacks a person causing physical injuries requiring medical treatment remains a Class 1 misdemeanor.

**FINDINGS**

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

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

Homicide Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 287 – Amend Insurance Laws -AB [Ed.2]

**STATUTE**

§ 58-50-40. Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions.

**DESCRIPTION**

A person who

1. is an insurance fiduciary, and
2. causes the cancellation or nonrenewal of group health or life insurances and the consequential loss of coverages of the persons insured through
  - a. the willful failure to pay such premiums, or
  - b. the willful failure to fund the plan; and
3. willfully fails to deliver
  - a. at least 45 days before the termination of the group health or life insurance/plan,
  - b. to all persons covered by the policy or plan,
  - c. a written notice of his intention to stop payment or cease funding.

**OFFENSE CLASS**

**CURRENT:** Class H felony.

**PROPOSED:** Class C felony, if losses suffered are \$100,000 or more; Class H felony if losses suffered are less than \$100,000.

**ANALYSIS**

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

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

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

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

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

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

**BILL NUMBER/SHORT TITLE:** HB 294 – Prohibit Cell Phone/Delinquent Juvenile –AB [Ed.2]

**STATUTE**

§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco products or mobile phones to ~~inmates~~inmates or delinquent juveniles.

**DESCRIPTION**

Subsection (d):

A person who

1. knowingly
2. gives or sells
3. a mobile telephone or other wireless communication device, or a component of such device
4. a. to a delinquent juvenile in the custody of the Division of Juvenile Justice, or  
b. to a person who is not a delinquent juvenile, for delivery to a delinquent juvenile.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

G.S. 14-258.1(d) provides that it is a Class H felony to give or sell a mobile telephone to an inmate in the custody of the Division of Adult Correction.

**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:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]

**STATUTE**

§ 14-100.1. ~~Possession or manufacture~~ Possession, manufacture, or sale of certain fraudulent forms of identification.

**DESCRIPTION**

Subsection (e):

A person who violates any provision of G.S. 14-100.1.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**PROPOSED:** Class G felony, except where specifically retained as a Class 1 misdemeanor.

**ANALYSIS**

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

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

G.S. 14-100.1 provides that it is unlawful for any person to knowingly possess, manufacture or sell a false or fraudulent form of identification; and it is unlawful for any person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent information.

Amended G.S. 14-100.1(e) provides that the following violations shall remain a Class 1 misdemeanor: a violation based on the mere possession of a false or fraudulent form of identification; a violation by a person under the age of 21 for the purpose of the underage purchase of alcohol; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner's permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(1):

A person who

1. displays or causes to be displayed, or possesses
2. a driver's license, learner's permit, restricted drivers permit, restricted identification card, or special identification card,
3. knowing the same to be fictitious or to have been cancelled, revoked, suspended or altered.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor, pursuant to G.S. 20-35.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: This offense may also be consistent with a Class 1 or 2 misdemeanor.

Note: Because this provision reclassifies the existing offense from a misdemeanor to a felony, it has the potential for significant impact on the prison population (see page 31).

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(2):

A person who

1. counterfeits, sells, lends to, or knowingly permits the use of,
2. by a person not entitled thereto,
3. a driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor, pursuant to G.S. 20-35.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: This offense may also be consistent with a Class 1 or 2 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(3):

A person who

1. displays or represents as one’s own
2. a driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card,
3. not issued to him.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor, pursuant to G.S. 20-35.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: This offense may also be consistent with a Class 1 or 2 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(4):

A person who

1. fails or refuses to surrender
2. to the Division of Motor Vehicles
3. upon demand
4. any driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card,
5. that has been suspended, cancelled, or revoked as provided by law.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor, pursuant to G.S. 20-35.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may be consistent with Class 1 or 2 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(5):

A person who

1. uses a false or fictitious name or gives a false or fictitious address in any application for
  - a. a driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card,
  - b. or any renewal or duplicate thereof, or
2. knowingly makes a false statement or knowingly conceals a material fact or otherwise commits a fraud in any such application, or
3. procures or knowingly permits or allows another to commit any of the foregoing acts.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

G.S. 20-30(a)(5) further provides that any license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card procured in the above manner is void and monies paid are forfeited to the state.

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

Note: This offense may also be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(6):

A person who

1. makes a color photocopy or other color reproduction of
2. a driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card,
3. that has been color-photocopied or otherwise reproduced in color
  - a. unless the photocopy or other reproduction was authorized by the Commissioner.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor, pursuant to G.S. 20-35.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

G.S. 20-20(a)(6) further provides that it is lawful to make a black and white photocopy of any of the listed forms of identification.

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may be consistent with a Class 2 or 3 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(7):

A person who

1. sells or offers for sale
2. a reproduction or facsimile or simulation of
3. a driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

G.S. 20-20(a)(7) further provides that this subdivision does not apply to agents or employees of the Division of Motor Vehicles while acting in the course and scope of their employment.

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(8):

A person who

1. possesses more than one commercial drivers license, or
2. possesses a commercial drivers license and a regular drivers license.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor, pursuant to G.S. 20-35.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

G.S. 20-35, Penalties for violating Article; defense to driving without a license, provides that, except as otherwise provided, a violation of Article 2 of Chapter 20 of the General Statutes is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may also be consistent with a Class 1 or 2 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(9):

A person who

1. presents, displays, or uses
2. a driver’s license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card
  - a. that contains a false or fictitious name
3. in the commission or attempted commission of a felony.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class H or I felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies.

**DATE OF REVIEW:** 4/24/15

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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 328 – Highway Safety/Citizens Protection Act [Ed.2]  
(cont'd)

**STATUTE**

§ 20-30. Violations of license, learner’s permit, restricted drivers permit, restricted identification card, or special identification card provisions.

**DESCRIPTION**

Subdivision (a)(10):

A person who

1. possesses more than one special identification card
2. for a fraudulent purpose.

**PROPOSED OFFENSE CLASS**

Class G felony.

**ANALYSIS**

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

New G.S. 20-30(c) provides that any violation of G.S. 20-30 by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor; and a violation by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## HB 328: HIGHWAY SAFETY/CITIZENS PROTECTION ACT

*PREPARED: April 14, 2015*

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

The following scenarios were prepared by North Carolina Sentencing and Policy Advisory Commission (NCSPAC) staff at the request of Fiscal Research Division (FRD) staff. The scenarios are based on defendant-level conviction data from the Administrative Office of the Courts (AOC).

It is important to note several differences between NCSPAC data and AOC data:

- Conviction data from NCSPAC are based on the most serious conviction for a defendant, while conviction data from AOC are based on all convictions for a defendant.
- Conviction data for offenses that do not have a specific offense code (colloquially known as “99 codes”) are typically not included in data provided by NCSPAC for fiscal notes, while they are included in data provided by AOC.

As requested by FRD staff, the scenarios assume that defendants under the age of 18 would be convicted as if they were using the ID to purchase tobacco products or cigarette wrapping papers, defendants between 18 and 20 years of age would be convicted as if they were using the ID to purchase alcohol, and defendants 21 years of age and older would be convicted as felons. Based on this assumption, there would be no change in prison resource needs for defendants under 21 since they would remain misdemeanants. Additional prison beds would be needed for any misdemeanor convictions that would become felony convictions under the proposed bill. Therefore, impact estimates are provided using AOC data on convictions for defendants 21 years of age or older.

The scenarios are based on current convictions and do not take into account the creation of new offenses or the expansion of existing offenses as proposed in HB 328. See March 20, 2015, NCSPAC analysis for the estimated impact of these proposed changes.

**SECTION 2.(a)** In FY 2013/14, there were 76 Class 1 misdemeanor convictions for defendants 21 years of age and older under G.S. 14-100.1. It is estimated that 40% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months during FY 2013/14. If, for example, 76 convictions per year for defendants 21 years of age and older were reclassified from Class 1 to Class G, this would result in the need for 30 additional prison beds the first year and 48 additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**SECTION 2.(b)** In FY 2013/14, there were 142 defendants 21 years of age and older convicted under G.S. 20-30.

**Subdivision (a)(1)** In FY 2013/14, there were 110 Class 2 misdemeanor convictions for defendants 21 years of age and older under subdivision (a)(1). It is estimated that 40% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months during FY 2013/14. If, for example, 110 convictions per year for defendants 21 years of age and older were reclassified from Class 2 to Class G, this would result in the need for 44 additional prison beds the first year and 69 additional

prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(2)** In FY 2013/14, there was one Class 2 misdemeanor conviction for defendants 21 years of age and older under subdivision (a)(2). Using threshold data, if, for example, three convictions per year were reclassified from Class 2 to Class G, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(3)** In FY 2013/14, there were four Class 2 misdemeanor convictions for defendants 21 years of age and older under subdivision (a)(3). It is estimated that 40% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months during FY 2013/14. If, for example, four convictions per year for defendants 21 years of age and older were reclassified from Class 2 to Class G, this would result in the need for two additional prison beds the first year and three additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(4)** In FY 2013/14, there were no Class 2 misdemeanor convictions for defendants 21 years of age and older under subdivision (a)(4). Using threshold data, if, for example, three convictions per year were reclassified from Class 2 to Class G, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(5)** In FY 2013/14, there were 26 Class 1 misdemeanor convictions for defendants 21 years of age and older under subdivision (a)(5). It is estimated that 40% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months. If, for example, 26 convictions per year for defendants 21 years of age and older were reclassified from Class 1 to Class G, this would result in the need for 10 additional prison beds the first year and 16 additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(6)** In FY 2013/14, there were no Class 2 misdemeanor convictions for defendants 21 years of age and older under subdivision (a)(6). Using threshold data, if, for example, three convictions per year were reclassified from Class 2 to Class G, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(7)** In FY 2013/14, there were no Class I felony convictions for defendants 21 years of age and older under subdivision (a)(7). Impact on the prison population will occur if Class I convictions become Class G convictions under the proposed reclassification because of the higher rate of active sentences (16% for Class I compared to 40% for Class G) and longer average estimated time served (6 months compared to 14 months for Class G). Using threshold data, if nine convictions per year were reclassified from Class I to Class G, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for three additional prison beds the first year and four additional prison beds the second year.

**Subdivision (a)(8)** In FY 2013/14, there was one Class 2 misdemeanor conviction for defendants 21 years of age and older under subdivision (a)(8). Using threshold data, if, for example, three convictions per year were reclassified from Class 2 to Class G, this would result in the need for one additional prison

bed the first year and two additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

**Subdivision (a)(9)** In FY 2013/14, there were no Class I felony convictions for defendants 21 years of age and older under subdivision (a)(9). Impact on the prison population will occur if Class I convictions become Class G convictions under the proposed statute because of the higher rate of active sentences (16% for Class I compared to 40% for Class G) and longer average estimated time served (6 months compared to 14 months for Class G). Using threshold data, if, for example, nine convictions per year were reclassified from Class I to Class G, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for three additional prison beds the first year and four additional prison beds the second year.

**Subdivision (a)(10)** Since the proposed subdivision 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 defendants 21 years of age and older might be convicted and sentenced as Class G felons under the proposed statute. In FY 2013/14, 40% of Class G convictions resulted in active sentences, with an average estimated time served of 14 months. If, for example, there were three Class G convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

It is not known how many defendants between 18 and 20 years of age might be convicted and sentenced as Class 1 misdemeanants under the proposed statute. In FY 2013/14, 30% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 37 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

It is not known how many defendants under 18 years of age might be convicted and sentenced as Class 2 misdemeanants under the proposed statute. In FY 2013/14, 33% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Section 2 is effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data; NC Administrative Office of the Courts, FY 2013/14 Charge and Conviction Data for G.S. 14-100.1 and G.S. 20-30 by Defendant Age

**NORTH CAROLINA 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 449 – Strengthen Law Enforcement Access/DV Crimes  
[Ed.1]

**STATUTE**

§ 14-33.2. Habitual misdemeanor assault.

**DESCRIPTION**

A person who

1. violates any of the provisions of
  - a. G.S. 14-33, Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments, or
  - b. G.S. 14-34, Assaulting by pointing a gun, and
2. has one or more prior convictions for either misdemeanor or felony assault.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

Currently, G.S. 14-33.2 provides that a person commits the offense of habitual misdemeanor assault if that person violates any of the provisions of G.S. 14-33 and causes physical injury, or G.S. 14-34, and has two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions occurring no more than 15 years prior to the date of the current violation; violation of this section is a Class H felony.

**FINDINGS**

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

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

G.S. 164-41 is not applicable.

The 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:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 552 – Graffiti Vandalism [Ed.3]

**STATUTE**

§ 14-127.1. Graffiti vandalism.

**DESCRIPTION**

Subsection (c):

A person who

1. violates G.S. 14-127.1(a), and
  - a. has two or more prior convictions for violation of G.S. 14-127.1, or
  - b. commits five or more violations of this section within a 60-day period.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

G.S. 14-127.1(a) provides that “graffiti vandalism” means to unlawfully write or scribble on, mark, paint, deface, or besmear the walls of (i) any real property, whether public or private, including cemetery tombstones and monuments, (ii) any public building or facility as defined in G.S. 14-132, or (iii) any statue or monument situated in any public place, by any type of pen, paint, or marker regardless of whether the pen or marker contains permanent ink, paint, or spray paint. A violation is a Class 1 misdemeanor, except as provided above.

**FINDINGS**

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

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

G.S. 164-41 is not applicable.

The 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:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 552: GRAFFITI VANDALISM**

*PREPARED: April 13, 2015*

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

This bill creates one new misdemeanor offense and two new felony offenses.

**SECTION 1.** This Section enacts G.S. 14-127.1. Graffiti Vandalism.

Subsection (a) defines “graffiti vandalism.”

Subsection (b) makes it a Class 1 misdemeanor if a person engages in graffiti vandalism. A person convicted under this subsection shall be fined a minimum of \$500.00 and required to perform 24 hours of community service (punishment does not appear to be limited to this).

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 30% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 37 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Subsection (c) makes it a Class H felony if a person engages in graffiti vandalism and either the cost to repair damage caused by the violation is in excess of \$1,000, or the person has two or more prior convictions for violation of G.S. 14-127.1.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were four Class H convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Subsection (d) punishes a person as a Class H felon if the person is convicted of five or more violations of G.S. 14-127.1 in a single session of district court or in a single week of superior court and at least five of the offenses occurred within a 60-day period. The court must consolidate the offenses for judgment.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were four Class H convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

The conduct prohibited by the new G.S. 14-127.1 may be covered under existing statutes (*see* Table 1).

Table 1  
Existing Statutes

| Offense  | Class   | Number of Convictions |
|--|---|-----------------------|
| Willful and wonton injury to real property (G.S. 14-127).                            | Class 1 misdemeanor.  | 990                   |
| Disorderly conduct in and injuries to public buildings and facilities (G.S. 14-132). | Class 2 misdemeanor.  | 9                     |
| Injuring houses, churches, fences and walls (G.S. 14-144).                           | Class 2 misdemeanor if the damage is \$5,000 or less.   | 3                     |
|  | Class I felony if the damage is more than \$5,000.  | 1                     |
| Removing, altering or defacing landmarks (G.S. 14-147).                              | Class 2 misdemeanor.  | 0                     |
| Defacing or desecrating grave sites (G.S. 14-148).                                   | Class 1 misdemeanor if the damage is less than \$1,000.   | 2                     |
|  | Class I felony if the damage is \$1,000 or more.  | 0                     |
| Willful and wanton injury to personal property; punishments (G.S. 14-160).           | Class 2 misdemeanor if the damage is \$200.00 or less; Class 1 misdemeanor if the damage is more than \$200.00. | 1,485                 |

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

It is not known how many of the existing Class 2 convictions listed in Table 1 were for conduct that may be covered by proposed G.S. 14-127.1 and punished as a Class 1 misdemeanor. In FY 2013/14, 30% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 37 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Class 2 convictions for these offenses that might be convicted as Class 1 convictions under this proposed statute would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

It is also not known how many of the existing Class 1 and Class 2 convictions listed in Table 1 were for conduct that may be covered by proposed G.S. 14-127.1 and punished as a Class H felony. In FY 2013/14, 35% of Class H convictions resulted in active sentences, with an average estimated time served

of 10 months. If, for example, there were four Class H convictions per year that had previously been punished as a Class 1 or Class 2 misdemeanor, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

It is also not known how many of the existing Class I convictions listed in Table 1 were for conduct that may be covered by proposed G.S. 14-127.1 and punished as a Class H felony. Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (16% for Class I compared to 35% for Class H) and longer average estimated time served (6 months compared to 10 months for Class I). Using threshold data, if there were nine Class H convictions per year that had previously been punished as a Class I, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for three additional prison beds the first year and four additional prison beds the second year.

**SECTION 2.** This section amends G.S. 14-132, Disorderly conduct in and injuries to public buildings and facilities, to provide that it is a Class 2 misdemeanor to violate any provision of the statute unless the conduct is covered under some other provision of law providing greater punishment, thereby removing conduct covered by the new G.S. 14-127.1

There were 9 Class 2 convictions under G.S. 14-132 during FY 2013/14. It is not known how many of these convictions would be convicted under the proposed G.S.14-127.1 (*see Existing Statutes analysis in Section 1.*).

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 554 – Protect Public from Dangerous Wild Animals [Ed.1]

**STATUTE**

§ 19A-77. Penalties.

**DESCRIPTION**

Subsection (b):

A person who

1. owns or possesses a dangerous wild animal, and
2. whose act or omission in the care, control, or containment of that animal
3. results in
  - a. the animal running loose, and
  - b. causing serious bodily injury to any person.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

This is a strict liability offense.

HB 554 enacts Article 7 of Chapter 19A, regulating dangerous wild animals. Pursuant to G.S. 19A-77(a), each violation of the Article is a Class 2 misdemeanor, and G.S. 19A-77(b) also provides that a an act or omission by the owner or custodian of a dangerous wild animal resulting in the animal running loose or causing property damage is a Class A1 misdemeanor.

**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 or 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 serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 560 – Assault Emergency Workers/Hospital Personnel  
[Ed.1]

**STATUTE**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and ~~emergency department~~ hospital personnel.

**DESCRIPTION**

Subsection (a):

A person who

1. commits an assault or affray
2. causing physical injury on
3. hospital personnel
  - a. in the discharge or attempted discharge of their duties.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

Adds non-emergency department personnel to the list of people protected under G.S. 14-34.6.

**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:** 4/24/15

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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 560 – Assault Emergency Workers/Hospital Personnel  
[Ed.1] (cont'd)

**STATUTE**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and ~~emergency department~~ hospital personnel.

**DESCRIPTION**

Subsection (b):

A person who

1. commits an assault or affray on
2. hospital personnel
  - a. in the discharge or attempted discharge of their duties, and
3. inflicts serious bodily injury, or
4. uses a deadly weapon other than a firearm.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

Adds non-emergency department personnel to the list of people protected under G.S. 14-34.6.

**FINDINGS**

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

**DATE OF REVIEW:** 4/24/15

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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 560 – Assault Emergency Workers/Hospital Personnel  
[Ed.1] (cont'd)

**STATUTE**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and ~~emergency department~~ hospital personnel.

**DESCRIPTION**

Subsection (c):

A person who

1. while using a firearm,
2. commits an assault or affray
3. on hospital personnel
  - a. in the discharge or attempted discharge of their duties.

**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.

Adds non-emergency department personnel to the list of people protected under G.S. 14-34.6.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## HB 560: ASSAULT EMERGENCY WORKERS/HOSPITAL PERSONNEL

*PREPARED: April 16, 2015*

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

This bill expands the scope of three existing felony offenses under G.S. 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and emergency department personnel.

#### Subsection (a)

Under subsection (a), it is a Class I felony if a person commits an assault or affray causing physical injury on any of the following persons who are discharging or attempting to discharge their official duties.

- 1) An emergency medical technician or other emergency health care provider.
- 2) A medical responder.
- 3) The following emergency department personnel: physicians, physicians assistants, nurses, and licensed nurse practitioners.
- 4) A firefighter.

This bill expands the scope of the offense by adding physicians, physicians assistants, nurses, and licensed nurse practitioners who are hospital personnel but who do not work in the emergency department (replaces “emergency department personnel” with “hospital personnel”).

There were 8 convictions under G.S. 14-34.6(a) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine additional Class I convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, a person who commits an assault or affray causing physical injury could be convicted of the following offenses:

1. Simple assault, simple assault and battery, or simple affray, a Class 2 misdemeanor under G.S. 14-33(a).
2. Assault inflicting serious injury, a Class A1 misdemeanor under G.S. 14-33(c)(1).

There were 2,863 convictions for simple assault, 430 convictions for simple assault and battery, and 443 convictions for simple affray in FY 2013/14. There were 624 convictions for assault inflicting serious injury in FY 2013/14.

It is not known how many of these existing offenses were committed on non-emergency department hospital personnel and could be convicted of the offenses covered by the proposed bill. Impact on the prison population would occur if any misdemeanor convictions would become felony convictions under the proposed bill. See above analysis for potential impact.

### Subsection (b)

Under subsection (b), a violation of subsection (a) is a Class H felony if the person inflicts serious bodily injury or uses a deadly weapon other than a firearm.

This bill expands the scope of the offense by adding physicians, physicians assistants, nurses, and licensed nurse practitioners who are hospital personnel but who do not work in the emergency department (replaces “emergency department personnel” with “hospital personnel”).

There were 2 convictions under G.S. 14-34.6(b) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were four additional Class H convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, a person who commits an assault or affray and inflicts serious bodily injury could be convicted of assault inflicting serious bodily injury, a Class F felony under G.S. 14-32.4. There were 184 convictions for assault inflicting serious bodily injury in FY 2013/14.

Currently, a person who commits an assault or affray and uses a deadly weapon (firearm or other deadly weapon) could be convicted of assault with a deadly weapon, a Class A1 misdemeanor under G.S. 14-33(c)(1). There were 971 convictions for assault with a deadly weapon in FY 2013/14.

It is not known how many of these existing offenses were committed on non-emergency department hospital personnel and could be convicted of the offenses covered by the proposed bill. Impact on the prison population would occur if any misdemeanor convictions would become felony convictions under the proposed bill. See above analysis for potential impact.

### Subsection (c)

Under subsection (c), a violation of subsection (a) is a Class F felony if the person uses a firearm.

This bill expands the scope of the offense by adding physicians, physicians assistants, nurses, and licensed nurse practitioners who are hospital personnel but who do not work in the emergency department (replaces “emergency department personnel” with “hospital personnel”).

There were no convictions under G.S. 14-34.6(c) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, a person who commits an assault or affray and uses a deadly weapon (firearm or other deadly weapon) could be convicted of assault with a deadly weapon, a Class A1 misdemeanor under G.S. 14-33(c)(1). There were 971 convictions for assault with a deadly weapon in FY 2013/14.

It is not known how many of these existing offenses were committed on non-emergency department hospital personnel and could be convicted of the offenses covered by the proposed bill. Impact on the prison population would occur if any misdemeanor convictions would become felony convictions under the proposed bill. See above analysis for potential impact.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 565 – Threaten LEO or Correctional Officer [Ed.1]

**STATUTE**

§ 14-277.6. Threats against law enforcement officers or correctional officers.

**DESCRIPTION**

Subsection (a):

A person who

1. knowingly and willfully
2. makes any threat to
  - a. inflict serious bodily injury upon, or
  - b. kill
3. any law enforcement or correctional officer, or any other person
4. as retaliation against any law enforcement or correctional officer because of the exercise of that officer’s duties.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

G.S. 14-277.6(c) provides that it is not necessary to prove that any law enforcement officer or correctional officer actually received the threatening communication or actually believed the threat.

Communicating threats is a Class 1 misdemeanor, G.S. 14-277.1.

G.S. 14-16.7 provides that it is a Class I felony to knowingly and willfully make a threat to inflict serious bodily injury upon or to kill any legislative officer, executive officer, or court officer.

G.S. 14-277.1, communicating a threat, orally or in writing, against another, his children, siblings, spouse, dependent, or property, is a Class 1 misdemeanor.

The Sentencing Commission reviewed a similar provision in June 2014 (SB 842) and found that the offense would be inconsistent with the Offense Classification Criteria for a Class F felony, but noted that it would be consistent with the Offense Classification Criteria for a Class H felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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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 565 – Threaten LEO or Correctional Officer [Ed.1] (cont'd)

**STATUTE**

§ 14-277.6. Threats against law enforcement officers or correctional officers.

**DESCRIPTION**

Subsection (b):

A person who

1. knowingly and willfully
2. deposits for conveyance in the mail
  - a. any letter, writing or other document
  - b. containing a threat to commit an offense described in G.S. 14-277.6(a).

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

G.S. 14-277.6(c) provides that it is not necessary to prove that any law enforcement officer or correctional officer actually received the threatening communication or actually believed the threat.

G.S. 14-16.7, knowingly and willfully depositing for conveyance in the mail any letter, writing or other document containing a threat against a legislative, executive, court officer, or other person in retaliation against said officer because of the exercise of that officer's duties is a Class I felony.

G.S. 14-277.1, communicating a threat, orally or in writing, against another, his children, siblings, spouse, dependent, or property, is a Class 1 misdemeanor.

The Sentencing Commission reviewed a similar provision in June 2014 (SB 842) and found that the offense would be inconsistent with the Offense Classification Criteria for a Class F felony, but noted that it would be consistent with the Offense Classification Criteria for a Class H felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 565: THREATEN LEO OR CORRECTIONAL OFFICER**

*PREPARED: April 20, 2015*

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

This bill creates two Class I felonies.

**§ 14-277.6. Threats against law enforcement officers or correctional officers.**

Subsection (a) makes it a Class I felony for any person to knowingly and willfully make any threat to inflict serious bodily injury upon or to kill any law enforcement officer or correctional officer or to knowingly and willfully make any threat to inflict serious bodily injury upon or kill any other person as retaliation against any law enforcement officer or correctional officer because of the exercise of that officer's duties.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

This conduct could currently be charged as misdemeanor communicating threats under G.S. 14-277.1. In FY 2013/14 there were 1,925 convictions for communicating threats, which is a Class 1 misdemeanor. It is not known how many of these offenses were committed against a law enforcement officer or correctional officer.

Subsection (b) makes it a Class I felony for any person to knowingly and willfully deposit for conveyance in the mail any letter, writing, or other document containing a threat to commit an offense described in subsection (a) of G.S. 14-277.6.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

This conduct could currently be charged as misdemeanor communicating threats under G.S. 14-277.1. In FY 2013/14 there were 1,925 convictions for communicating threats, which is a Class 1 misdemeanor. It is not known how many of these offenses were committed against a law enforcement officer or correctional officer.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 611 – Enact Death with Dignity Act [Ed.1]

**STATUTE**

§ 90-325.18. Liabilities.

**DESCRIPTION**

Subsection (a):

A person who

1. willfully
2. a. alters or forges a request for medication, or  
b. conceals or destroys a rescission of such request
3. without authorization of the patient, and
4. with the intent or effect of causing the patient’s death.

**PROPOSED OFFENSE CLASS**

Class A felony.

**ANALYSIS**

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

G.S. 14-17(a), Murder in the first degree is a Class A felony.

**FINDINGS**

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

Note: Class A is reserved for first degree murder; it is not clear that the patient must die for a person to violate this offense.

**DATE OF REVIEW:** 4/24/15

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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 611 – Enact Death with Dignity Act [Ed.1] (cont'd)

**STATUTE**

§ 90-325.18. Liabilities.

**DESCRIPTION**

Subsection (b):

A person who

1. coerces or exerts
2. undue influence
3. on a patient
4. to request medication
5. for the purpose of ending the patient's life, or
6. destroys a rescission of such a request.

**PROPOSED OFFENSE CLASS**

Class A felony.

**ANALYSIS**

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

G.S. 14-17(a), Murder in the first degree is a Class A felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: Class A is reserved for first degree murder; it is not clear whether the patient must die for a person to violate this offense.

**DATE OF REVIEW:** 4/24/15

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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 611 – Enact Death with Dignity Act [Ed.1] (cont'd)

**STATUTE**

§ 90-325.21. Form of request; penalties for altering, forging, concealing, or destroying.

**DESCRIPTION**

Subsection (b):

A person who

1. willfully alters, forges, conceals, or destroys
2. an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests,
3. without the authorization of the principal, and
4. with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures or of artificially administered nutrition and hydration
5. which hastens the death of the principal.

**PROPOSED OFFENSE CLASS**

Class A felony.

**ANALYSIS**

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

G.S. 90-325.21(c) provides that it shall be a Class A [*sic*] misdemeanor for a person, without authorization of the principal, to willfully alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests with the intent or effect of affecting a health care decision.

G.S. 14-17(a), Murder in the first degree is a Class A felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 626 – Amend Prop Damage Offenses [Ed.1]

**STATUTE**

§ 14-160. Willful and wanton injury to personal property; punishments.

**DESCRIPTION**

Subdivision (b)(2):

A person who

1. willfully and wantonly
2. injures the personal property of another
3. causing damage of more than \$10,000.00, but \$100,000.00 or less.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor

**PROPOSED:** Class I felony.

**ANALYSIS**

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

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

Currently, G.S. 14-160(b) provides that it shall be a Class 1 misdemeanor for any person to wantonly and willfully injure the personal property of another causing damage in excess of \$200.00; otherwise it is a Class 2 misdemeanor.

Proposed G.S. 14-160(b)(1) provides that it shall be a Class 1 misdemeanor for any person to wantonly and willfully injure the personal property of another causing damage in excess of \$200.00, but \$10,000.00 or less.

**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:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 626 – Amend Prop Damage Offenses [Ed.1] (cont'd)

**STATUTE**

§ 14-160. Willful and wanton injury to personal property; punishments.

**DESCRIPTION**

Subdivision (b)(3):

A person who

1. willfully and wantonly
2. injures the personal property of another
3. causing damage of more than \$100,000.00.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**PROPOSED:** 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.

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

Currently, G.S. 14-160(b) provides that it shall be a Class 1 misdemeanor for any person to wantonly and willfully injure the personal property of another causing damage in excess of \$200.00; otherwise it is a Class 2 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

This offense is consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from any structure designed to house or secure any activity or property, loss occasioned by the taking or removing of property or by breach of trust, formal or informal, in personal injury, or in significant societal injury as Class H felonies.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 626 – Amend Prop Damage Offenses [Ed.1] (cont'd)

**STATUTE**

§ 14-127. Willful and wanton injury to real property.

**DESCRIPTION**

Subdivision (3):

A person who

1. willfully and wantonly
2. damages, injures, or destroys,
3. in excess of \$50,000.00, but \$150,000.00 or less,
4. any real property whatsoever,
5. either of a public or private nature.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**PROPOSED:** Class I felony.

**ANALYSIS**

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

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

Currently, G.S. 14-127 provides that it shall be a Class 1 misdemeanor for any person to willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature.

Proposed G.S. 14-127(1) provides that if the damage is \$200.00 or less, the person shall be guilty of a Class 2 misdemeanor; and subdivision (2) makes it a Class 1 misdemeanor if the damage is more than \$200.00, but is \$50,000.00 or less.

**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:** 4/24/15

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

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

**BILL NUMBER/SHORT TITLE:** HB 626 – Amend Prop Damage Offenses [Ed.1] (cont'd)

**STATUTE**

§ 14-127. Willful and wanton injury to real property.

**DESCRIPTION**

Subdivision (4):

A person who

1. willfully and wantonly
2. damages, injures, or destroys,
3. in excess of \$150,000.00,
3. any real property whatsoever,
4. either of a public or private nature.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**PROPOSED:** 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.

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

Currently, G.S. 14-127 provides that it shall be a Class 1 misdemeanor for any person to willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class G felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss from the person or from the person's dwelling as Class G felonies.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

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

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

**BILL NUMBER/SHORT TITLE:** HB 627 – Fight Financial Transaction Card Fraud [Ed.1]

**STATUTE**

§ 14-113.17. Punishment and penalties.

**DESCRIPTION**

Subsection (a):

A person who violates certain provisions of Article 19B of Chapter 14, the Financial Transaction Card Crime Act.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor.

**PROPOSED:** Class I felony.

**ANALYSIS**

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

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

The following offenses will be raised from a Class 2 misdemeanor to a Class I felony pursuant to G.S. 14-113.17(a):

G.S. 14-113.13(a) or (b), Financial transaction card fraud, where the value does not exceed \$500.00.

G.S. 14-113.13(c), Financial transaction card fraud by false statement.

G.S. 14-113.13(c1), Financial transaction card fraud by agent.

G.S. 14-113.13(d), Financial transaction card fraud by false report of theft or loss.

G.S. 14-113.15, Criminal receipt of goods and services fraudulently obtained, where the value does not exceed \$500.00.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 627 – Fight Financial Transaction Card Fraud [Ed.1]  
(cont'd)

**STATUTE**

§ 14-113.17. Punishment and penalties.

**DESCRIPTION**

Subsection (b):

A person who commits a crime punishable under Article 19B of Chapter 14.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

The following offenses will be raised from a Class I felony to a Class G pursuant to G.S. 14-113.17(b):

G.S. 14-113.9, Financial transaction card theft.

G.S. 14-113.11, Forgery of financial transaction card.

G.S. 14-113.13(a) or (b), Financial transaction card fraud, where the value exceeds \$500.00.

G.S. 14-113.14, Criminal possession of financial transaction card forgery devices.

G.S. 14-113.15, Criminal receipt of goods and services fraudulently obtained, where the value exceeds \$500.00.

G.S. 14-113.15A, Criminal factoring of financial transaction card records.

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

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 627: FIGHT FINANCIAL TRANSACTION CARD FRAUD**

*PREPARED: April 16, 2015*

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

This bill reclassifies existing offenses through the amendment of G.S. 14-113.17, Punishment and penalties (Article 19B of Chapter 14 of the General Statutes, the Financial Transaction Card Crime Act). There are a number of offenses related to financial transaction cards within Article 19B, and all are punished pursuant to G.S. 14-113.17(a) or (b), as specified in their statutory sections. Currently, G.S. 14-113.17(a) provides any person subject to the punishment and penalties of Article 19B shall be guilty of a Class 2 misdemeanor; and G.S. 14-113.17(b) provides that a crime punishable under Article 19B is a Class I felony. This bill amends G.S. 14-113.17(a) to reclassify the penalty from a Class 2 misdemeanor to a Class I felony; and G.S. 14-113.17(b) to reclassify the penalty from a Class I felony to a Class G felony.

The following offenses are punished pursuant to G.S. 14-113.17(a); they are currently Class 2 misdemeanors and would become Class I felonies:

| <b>G.S.</b>         | <b>Title</b>   | <b>Number of Convictions</b> |
|---------------------|--|------------------------------|
| 14-113.13(a) or (b) | Financial transaction card fraud, where the value does not exceed \$500.00                             | 0                            |
| 14-113.13(c)        | Financial transaction card fraud by false statement  | 0                            |
| 14-113.13(c1)       | Financial transaction card fraud by agent  | 0                            |
| 14-113.13(d)        | Financial transaction card fraud by false report of theft or loss                                      | 0                            |
| 14-113.15           | Criminal receipt of goods and services fraudulently obtained, where the value does not exceed \$500.00 | No AOC Offense Code          |

In FY 2013/14, there were no Class 2 misdemeanor convictions under G.S. 14-113.13. Using threshold data, if 9 convictions per year were reclassified from a Class 2 misdemeanor to a Class I felony, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-113.15. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Using threshold data, if 9 convictions per year were reclassified from Class 2 misdemeanor to Class I felony, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

The following offenses are punished pursuant to G.S. 14-113.17(b); they are currently Class I felonies and would become Class G felonies:

| <b>G.S.</b>         | <b>Title</b>   | <b>Number of Convictions</b> |
|---------------------|--|------------------------------|
| 14-113.9            | Financial transaction card theft   | 114                          |
| 14-113.11           | Forgery of financial transaction card  | 2                            |
| 14-113.13(a) or (b) | Financial transaction card fraud, where the value exceeds \$500.00                             | 0                            |
| 14-113.14           | Criminal possession of financial transaction card forgery devices                              | No AOC Offense Code          |
| 14-113.15           | Criminal receipt of goods and services fraudulently obtained, where the value exceeds \$500.00 | No AOC Offense Code          |
| 14-113.15A          | Criminal factoring of financial transaction card records                                       | No AOC Offense Code          |

In FY 2013/14, there were 116 convictions for offenses punished pursuant to G.S. 14-113.17(b) (for which AOC had offense codes). As Class I felons under current law, 22% of these convictions resulted in an active sentence with an average estimated time served of 7 months. Under the proposed bill, it is estimated that the rate of active sentences and average estimated time served would increase based on the higher active rate and longer sentence lengths for Class G felons as compared to Class I felons. The following table provides the projected prison impact for the proposed reclassification of this offense from Class I to Class G:

| <b>Fiscal Year</b> | <b>Estimated Additional Prison Beds</b> |
|--------------------|---|
| Year 1             | 46                                      |
| Year 2             | 61                                      |
| Year 3             | 57                                      |
| Year 4             | 91                                      |
| Year 5             | 83                                      |
| Year 6             | 91                                      |
| Year 7             | 125                                     |
| Year 8             | 134                                     |
| Year 9             | 100                                     |
| Year 10            | 96                                      |

Source: NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

Notes:

1. Assumes effective for crimes committed on or after December 1, 2015. Based on this effective date, Fiscal Year 2016/17 would represent the first full year of impact due to the gap between the time a felony offense is committed and the offender is convicted and sentenced.
2. Assumes the same rates for active sentences and for confinement for probation and post-release supervision violations as found in FY 2013/14 for Class G.
3. Assumes time served for active sentences and for confinement for probation and post-release supervision violations will match Class G data for FY 2013/14.
4. Assumes no changes in charging and/or plea bargaining practices for this offense.
5. Assumes no deterrent or incapacitative effects.

Effective December 1, 2015, and applies to violations committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 691 – Assault on National Guard Member [Ed.1]

**STATUTE**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, a member of the North Carolina National Guard, and emergency department personnel.

**DESCRIPTION**

Subsection (a):

A person who

1. commits an assault or affray
2. causing physical injury on
3. a member of the North Carolina National Guard
  - a. in the discharge or attempted discharge of their duties.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

Adds a member of the North Carolina National Guard to the list of people protected under G.S. 14-34.6.

**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:** 4/24/15

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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 691 – Assault on National Guard Member [Ed.1] (cont'd)

**STATUTE**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, a member of the North Carolina National Guard, and emergency department personnel.

**DESCRIPTION**

Subsection (b):

A person who

1. commits an assault or affray on
2. a member of the North Carolina National Guard
  - a. in the discharge or attempted discharge of their duties, and
3. inflicts serious bodily injury, or
4. uses a deadly weapon other than a firearm.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

Adds a member of the North Carolina National Guard to the list of people protected under G.S. 14-34.6.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 4/24/15

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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 691 – Assault on National Guard Member [Ed.1] (cont'd)

**STATUTE**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, a member of the North Carolina National Guard, and emergency department personnel.

**DESCRIPTION**

Subsection (c):

A person who

1. while using a firearm,
2. commits an assault or affray
3. on a member of the North Carolina National Guard
  - a. in the discharge or attempted discharge of their duties.

**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.

Adds a member of the North Carolina National Guard to the list of people protected under G.S. 14-34.6.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## HB 691: ASSAULT ON NATIONAL GUARD MEMBER

*PREPARED: April 21, 2015*

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

This bill expands the scope of three existing felony offenses under G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, and emergency department personnel.

#### Subsection (a)

Under subsection (a), it is a Class I felony if a person commits an assault or affray causing physical injury on any of the following persons who are discharging or attempting to discharge their official duties.

- 5) An emergency medical technician or other emergency health care provider.
- 6) A medical responder.
- 7) The following emergency department personnel: physicians, physicians assistants, nurses, and licensed nurse practitioners.
- 8) A firefighter.

This bill expands the scope of the offense by adding “A member of the North Carolina National Guard” to the list of potential victims.

There were 8 convictions under G.S. 14-34.6(a) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine additional Class I convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, a person who commits an assault or affray causing physical injury could be convicted of the following offenses:

3. Simple assault, simple assault and battery, or simple affray, a Class 2 misdemeanor under G.S. 14-33(a).
4. Assault inflicting serious injury, a Class A1 misdemeanor under G.S. 14-33(c)(1).

There were 2,863 convictions for simple assault, 430 convictions for simple assault and battery, and 443 convictions for simple affray in FY 2013/14. There were 624 convictions for assault inflicting serious injury in FY 2013/14.

It is not known how many of these existing offenses were committed against a member of the North Carolina National Guard and could be convicted of the offenses covered by the proposed bill. Impact on the prison population would occur if any misdemeanor convictions would become felony convictions under the proposed bill. See above analysis for potential impact.

### Subsection (b)

Under subsection (b), a violation of subsection (a) is a Class H felony if the person inflicts serious bodily injury or uses a deadly weapon other than a firearm.

This bill expands the scope of the offense by adding “A member of the North Carolina National Guard” to the list of potential victims.

There were 2 convictions under G.S. 14-34.6(b) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were four additional Class H convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, a person who commits an assault or affray and inflicts serious bodily injury could be convicted of assault inflicting serious bodily injury, a Class F felony under G.S. 14-32.4. There were 184 convictions for assault inflicting serious bodily injury in FY 2013/14.

Currently, a person who commits an assault or affray and uses a deadly weapon (firearm or other deadly weapon) could be convicted of assault with a deadly weapon, a Class A1 misdemeanor under G.S. 14-33(c)(1). There were 971 convictions for assault with a deadly weapon in FY 2013/14.

It is not known how many of these existing offenses were committed against a member of the North Carolina National Guard and could be convicted of the offenses covered by the proposed bill. Impact on the prison population would occur if any misdemeanor convictions would become felony convictions under the proposed bill. See above analysis for potential impact.

### Subsection (c)

Under subsection (c), a violation of subsection (a) is a Class F felony if the person uses a firearm.

This bill expands the scope of the offense by adding “A member of the North Carolina National Guard” to the list of potential victims.

There were no convictions under G.S. 14-34.6(c) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Currently, a person who commits an assault or affray and uses a deadly weapon (firearm or other deadly weapon) could be convicted of assault with a deadly weapon, a Class A1 misdemeanor under G.S. 14-33(c)(1). There were 971 convictions for assault with a deadly weapon in FY 2013/14.

It is not known how many of these existing offenses were committed against a member of the North Carolina National Guard and could be convicted of the offenses covered by the proposed bill. Impact on the prison population would occur if any misdemeanor convictions would become felony convictions under the proposed bill. See above analysis for potential impact.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 699 – Gun Rights and Privacy Act [Ed.1]

**STATUTE**

§ 14-415.35. Carrying concealed weapons.

**DESCRIPTION**

A person who

1. carries a concealed weapon
2. while meeting any of the certain criteria listed in G.S. 14-415.35(b).

**PROPOSED OFFENSE CLASS**

Class 2 misdemeanor for a first offense, Class H felony for a second or subsequent offense.

**ANALYSIS**

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

G.S. 14-415.35(b) provides that it shall be unlawful for a person to carry a concealed weapon when he meets any one of a list of certain criteria. That list includes: being under indictment for a felony; being found guilty of a felony; being a fugitive from justice; being an unlawful user of, or addicted to, marijuana, alcohol, or any depressant, stimulant or narcotic; being currently or having been previously adjudicated to be lacking mental capacity or mentally ill; being or having been discharged from the US Armed Forces under any condition other than honorable; being or having been found guilty of a crime of violence constituting a misdemeanor; having an entry of a prayer for judgment continued for a criminal offense that would make it unlawful under this section for the person to carry a concealed weapon; being free on bond pending trial, appeal or sentencing for a crime that it would make it unlawful to carry concealed; having been convicted of an impaired driving offense within three years prior to the date on which he is carrying concealed.

**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 based on prior convictions is inconsistent with structured sentencing.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 711/HB 753 – Prohibit Counterfeit/Nonfunctional Air Bags  
[Ed.2]

**STATUTE**

§ 20-136.2. ~~Air bag installation.~~ Counterfeit and nonfunctional air bags.

**DESCRIPTION**

A person, firm or corporation who

1. knowingly installs, or reinstalls
2. a counterfeit air bag or nonfunctional air bag.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**PROPOSED:** Class H felony.

**ANALYSIS**

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

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

Currently, G.S. 20-136.2, Air bag installation, provides that it shall be a Class 1 misdemeanor for any person, firm or corporation to knowingly install or reinstall any object in lieu of an air bag, other than an air bag that was designed in accordance with safety regulations for the particular vehicle.

A counterfeit air bag is defined in G.S. 20-4.01(2d) as a replacement motor vehicle inflatable occupant restraint system, including all component parts, that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of the motor vehicle.

A nonfunctional air bag is defined in G.S. 20-4.01(23a) as a replacement motor vehicle inflatable occupant restraint system, including all component parts, that has a fault that is detected by the vehicle diagnostic system after the installation procedure is completed; or any object installed to deceive the vehicle owner into believing a functional airbag is installed.

**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:** 4/24/15

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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 711/HB 753 – Prohibit Counterfeit/Nonfunctional Air Bags  
[Ed.2] (cont'd)

**STATUTE**

§ 20-136.2. ~~Air bag installation.~~ Counterfeit and nonfunctional air bags.

**DESCRIPTION**

A person, firm or corporation who

1. knowingly imports, manufactures, sells, or offers for sale
2. a counterfeit air bag or nonfunctional air bag.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

Currently, G.S. 20-136.2, Air bag installation, provides that it shall be a Class 1 misdemeanor for any person, firm or corporation to knowingly install or reinstall any object in lieu of an air bag, other than an air bag that was designed in accordance with safety regulations for the particular vehicle.

A counterfeit air bag is defined in G.S. 20-4.01(2d) as a replacement motor vehicle inflatable occupant restraint system, including all component parts, that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of the motor vehicle.

A nonfunctional air bag is defined in G.S. 20-4.01(23a) as a replacement motor vehicle inflatable occupant restraint system, including all component parts, that has a fault that is detected by the vehicle diagnostic system after the installation procedure is completed; or any object installed to deceive the vehicle owner into believing a functional airbag is installed.

**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:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 711: PROHIBIT COUNTERFEIT/NONFUNCTIONAL AIR BAGS**

*PREPARED: April 21, 2015*

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

This bill creates a new Class 2 misdemeanor offense and expands and reclassifies an existing offense from Class 1 to Class H.

**SECTION 2.** This Section adds subdivision (a)(3) to G.S. 20-71.4, Failure to disclose damage to a vehicle shall be a misdemeanor, which makes it unlawful for a transferor of a motor vehicle to transfer a motor vehicle having knowledge that a counterfeit air bag or a nonfunctional air bag has been installed in the vehicle. Violation is a Class 2 misdemeanor.

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 this new offense. In FY 2013/14, 33% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

**SECTION 3.** This Section expands G.S. 20-136.2, (renamed) Counterfeit and nonfunctional air bags, to make it unlawful for any person, firm, or corporation to knowingly import, manufacture, sell, offer for sale, install, or reinstall (was “install or reinstall”) a counterfeit air bag or nonfunctional air bag. The Section also reclassifies the offense from a Class 1 misdemeanor to a Class H felony.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 20-136.2. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. If, for example, 4 convictions per year were reclassified from Class 1 misdemeanors to Class H felonies, this would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year. In addition, there will be some impact on post-release supervision (PRS) caseloads since PRS is required for offenders convicted of felonies.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 725 – Gun Safety Act [Ed.1]

**STATUTE**

§ 14-409.13. Report of loss or theft of firearm.

**DESCRIPTION**

A person who

1. is an owner of a firearm, and
2. fails to report the loss or theft of the firearm
3. within 48 hours after the discovery of the loss or theft
4. to either
  - a. the local law enforcement agency having jurisdiction over the location where the loss or theft occurred, or
  - b. the State Bureau of Investigation.

**PROPOSED OFFENSE CLASS**

Class 3 misdemeanor for a first offense, Class I felony for a second or subsequent offense.

**ANALYSIS**

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

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

**FINDINGS**

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

Bill is **inconsistent** with 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 based on prior convictions is inconsistent with structured sentencing.

**DATE OF REVIEW:** 4/24/15

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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 725 – Gun Safety Act [Ed.1] (cont'd)

**STATUTE**

§ 14-409.91. Large-capacity magazines prohibited; penalties; exceptions.

**DESCRIPTION**

Subsection (b):

A person who

1. possesses
2. a large-capacity magazine
3. during the commission of a felony.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

G.S. 14-409.91(a) provides that it is unlawful for a person to sell, transfer or possess a large-capacity magazine; a first violation of this subsection is a Class 2 misdemeanor, a second or subsequent violation is a Class 1 misdemeanor.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 792 – Privacy/Protection From Revenge Postings [Ed.2]

**STATUTE**

§ 14-190.5A. Disclosure of private images.

**DESCRIPTION**

A person who

1. with the intent
  - a. to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or
  - b. to cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person,
2. knowingly
3. discloses an image of another person who is identifiable from the image itself or information offered in connection with the image, and whose intimate parts are exposed or who is engaged in sexual conduct,
4. when the person knows or should have known that the depicted person has not consented to such disclosure and
5. under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

**FINDINGS**

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

Bill is **inconsistent** with 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 serious property loss or societal injury as Class I felonies.

**DATE OF REVIEW:** 04/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 792: PRIVACY/PROTECTION FROM REVENGE POSTINGS**

*PREPARED: April 23, 2015*

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

This bill creates a new Class H felony.

This bill enacts G.S. 14-401.26, Disclosure of private images. G.S. 14-401.26(b) makes it a Class H felony for any person, with the intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, or with the intent to cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person, to knowingly disclose an image of another person who is identifiable from the image itself or information offered in connection with the image, and whose intimate parts are exposed or who is engaged in a sexual act, when the person knows or should have known that the depicted person has not consented to such disclosure and under circumstances such that the person knew or should have known that the depicted person had a reasonable expectation of privacy. The scope of the new Class H felony is limited by the exceptions provided for in subsection (c): G.S. 14-401.26(b) does not apply when the images involve voluntary exposure in public or commercial settings, when disclosures are made in the public interest, or when the images are disclosed by providers of an interactive computer service for images provided by another person.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were four Class H convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 793 – Privacy/Up Secret Peeping Punishment [Ed.1]

**STATUTE**

§ 14-202. Secretly peeping into room occupied by another person.

**DESCRIPTION**

Subsection (d):

A person who

1. while secretly peeping
2. into any room,
3. uses any device to create a photographic image of another person in that room
4. for the purpose of harming, intimidating, extorting, threatening, or defrauding another person.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

Currently under G.S. 14-202(d), it is a Class I felony for a person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room for the purpose of arousing or gratifying the sexual desire of any person. This offense does not change, the bill adds a second purpose for which a person cannot create such photographic images.

**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:** 04/24/15

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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 793 – Privacy/Up Secret Peeping Punishment [Ed.1]  
(cont'd)

**STATUTE**

§ 14-202. Secretly peeping into room occupied by another person.

**DESCRIPTION**

Subsection (f):

A person who

1. for the purpose of harming, intimidating, extorting, threatening, or defrauding another person,
2. secretly or surreptitiously
3. uses or installs
4. in a room
5. any device that can be used to create a photographic image
6. with the intent to capture the image of another
7. without their consent.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

Currently under G.S. 14-202(f), it is a Class I felony for a person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent. This offense does not change, the bill adds a second purpose for which a person cannot create such photographic images.

**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:** 04/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## HB 793: PRIVACY/UP SECRET PEEPING PUNISHMENT

*PREPARED: April 22, 2015*

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

This bill creates two new Class I felony offenses.

Under subsection (d) of G.S. 14-202, Secretly peeping into room occupied by another person, it is a Class I felony if any person who, while secretly peeping into any room, uses any device to create a photographic image of another person in that room for the purpose of arousing or gratifying the sexual desire of any person. This bill amends subsection (d) to include violations for the purpose of harming, intimidating, extorting, threatening, or defrauding another person. Violation is a Class I felony.

In FY 2013/14, there were no Class I convictions under the current subsection (d). Since the proposed amendment to subsection (d) 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 this new offense. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Under subsection (f) of G.S. 14-202, it is a Class I felony if any person who, for the purpose of arousing or gratifying the sexual desire of any person, secretly or surreptitiously uses or installs in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent. This bill amends subsection (f) to include violations for the purpose of harming, intimidating, extorting, threatening, or defrauding another person. Violation is a Class I felony.

In FY 2013/14, there were no Class I convictions under the current subsection (f). Since the proposed amendment to subsection (f) 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 this new offense. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE:** HB 794 – Protection from Online Impersonation [Ed.2]

### STATUTE

§ 14-118.8. Online impersonation.

### DESCRIPTION

A person who

1. knowingly and
2. without consent
3. impersonates another person
4. through or on an Internet Web site or by other electronic means
5. for purposes of harming, intimidating, threatening, or defrauding another person, including the misrepresented person.

### PROPOSED OFFENSE CLASS

Class H felony.

### ANALYSIS

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

The statute does not apply to law enforcement officers, private protective service professionals, and alarm system professionals discharging their official/professional duties.

Note: The language “A violation of this subsection is punishable by a fine ..., or by imprisonment, or by both the fine and imprisonment.” is not necessary under Structured Sentencing; the felony punishment chart indicates what punishments are available.

### 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 serious property loss or societal injury as Class I felonies.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 801 – Same Firearm Protections for 50C as 50B Order  
[Ed.1]

**STATUTE**

§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order or civil no-contact order prohibited.

**DESCRIPTION**

Subsection (a1):

A person who

1. a. possesses, purchases, or receives or  
b. attempts to possess, purchase, or receive
2. a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms
3. against an order by the court for so long as that civil no-contact order or any successive civil no-contact order entered against that person pursuant to Chapter 50C of the General Statutes is in effect.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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.

This bill would also enact G.S. 50C-5.1. Surrender and disposal of firearms; violations; exemptions. Subsection (j) of that statute sets out this same offense with a reference to G.S. 14-269.8.

Currently, G.S. 14-269.8(a) contains the same offense as it applies to protective orders entered against a person pursuant to Chapter 50B of the General Statutes; violation is a Class H felony.

**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:** 04/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 83 – Criminal Law/Filing False Document [Ed.2]

**STATUTE**

§14-401.26. Filing false documents.

**DESCRIPTION**

A person who

1. presents a document for filing with the register of deeds or clerk of superior court
2. that the person knows is false or contains materially inaccurate or misleading information
3. with the intent that the recorded document be used to
  - a. alter an identity,
  - b. defraud another person or entity, or
  - c. circumvent legal name change procedures.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

G.S. 14-118.6, Filing false lien or encumbrance is a Class I felony.

G.S. 14-119(a), Forgery of notes, checks, and other securities; counterfeiting of instruments is a Class I felony.

G.S. 14-401.19, Filing false security agreements is 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.

**DATE OF REVIEW:** 3/6/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**SB 83: CRIMINAL LAW/FILING FALSE DOCUMENT**

*PREPARED: MARCH 30, 2015*

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

This bill creates new section G.S. 14-401.26, Filing False Documents. Under this section, it shall be a Class I felony for a person to present a document for filing with the register of deeds or clerk of superior court that the person knows is false, or contains materially inaccurate or misleading information, with the intent that the recorded document be used to alter an identity, defraud another person or entity, or circumvent legal name change procedures.

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 this new offense. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 343 – Student Assault on Teacher/Felony Offense [Ed.2]

**STATUTE**

§ 14-33.3. Student assault on a school employee.

**DESCRIPTION**

A person who

1. is a student aged 16 years older and
  - a. does not have an Individualized Education Program as defined in N.C.G.S. or
  - b. a Section 504 Plan under Federal statute and
2. assaults a school employee
  - a. while the school employee is discharging or attempting to discharge his or her duties as an employee or
  - b. as a result of the discharge or attempt to discharge that individual's duties as a school employee and
3. the assault occurs on school property.

**PROPOSED OFFENSE CLASS**

Class I felony for the first offense.

**ANALYSIS**

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

Under current law, it is a Class A1 misdemeanor for any person to assault a school employee or school volunteer when the employee/volunteer is discharging or attempting to discharge his or her duties as an employee/volunteer, or as a result of the discharge of such duties. (G.S. 14-33)

It is a Class I felony to assault an executive, legislative, or court officer. (G.S. 14-16.6(a))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: This offense may be consistent with a Class A1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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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 343 – Student Assault on Teacher/Felony Offense [Ed.2]  
(cont'd)

**STATUTE**

§ 14-33.3. Student assault on a school employee.

**DESCRIPTION**

A person who

1. is a student aged 16 years older and
  - a. does not have an Individualized Education Program as defined in N.C.G.S. or
  - b. a Section 504 Plan under Federal statute and
2. assaults a school employee
  - a. while the school employee is discharging or attempting to discharge his or her duties as an employee or
  - b. as a result of the discharge or attempt to discharge that individual's duties as a school employee and
3. the assault occurs on school property.

**PROPOSED OFFENSE CLASS**

Class G felony for the second or subsequent offense.

**ANALYSIS**

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

Under current law, it is a Class A1 misdemeanor for any person to assault a school employee or school volunteer when the employee/volunteer is discharging or attempting to discharge his or her duties as an employee/volunteer, or as a result of the discharge of such duties.

**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:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 417 – Habitual Impaired Driving/10-Year Period [Ed.1]

**STATUTE**

§ 20-138.5. Habitual impaired driving.

**DESCRIPTION**

A person who

1. drives while impaired as defined in G.S. 20-138.1 and
2. has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within 10 years of the date of the offense
  - a. The 10 years shall not include any period of time during which the person was incarcerated in a local, state, or federal detention center, jail, or prison.

**PROPOSED OFFENSE CLASS**

Class F felony.

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

**ANALYSIS**

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

Driving while impaired offenses are not classified under Structured Sentencing.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Driving while impaired offenses are not classified under Structured Sentencing.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## SB 417: HABITUAL IMPAIRED DRIVING/10-YEAR PERIOD

*PREPARED: MARCH 26, 2015*

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

This bill expands the scope of an existing felony offense by adjusting how the time period of eligibility is calculated.

Currently, G.S. 20-138.5 provides that it is a Class F felony for a person to drive while impaired, as defined in G.S. 20-138.1, Impaired Driving, who has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a), within 10 years of the date of this offense. Convictions under G.S. 20-138.5(a) carry a mandatory active sentence. This bill specifies that any time for which the person was incarcerated in a local, state, or federal detention center, jail, or prison shall be excluded from the calculation of the 10 year window, effectively tolling the time when a person is incarcerated towards the period of recency. This will have the effect of encompassing a longer period of time for persons who have an impaired driving conviction more than ten years prior to the date of this offense but who have been incarcerated during that period.

The additional offenders this bill would cover are currently sentenced as misdemeanors pursuant to G.S. 20-179, not under Article 81B of Chapter 15A of the General Statutes, Structured Sentencing. The Sentencing Commission does not maintain statistical information on misdemeanor impaired driving offenses, which form the basis for an habitual impaired driving conviction. In addition, no data are available to determine how many additional convictions may result from the proposed change to the calculation of the 10 year window.

In FY 2013/14, there were 289 convictions for habitual impaired driving under G.S. 20-138.5(a). Ninety-seven percent (n=280) received an active sentence with an average estimated time served of 17 months. It is not known how many additional convictions may result from the proposed broadening of the current statute. Based on FY 2013/14 data, if, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, active sentences would result in the need for two additional prison beds the first year and three additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 418 – Amend Statutory Rape/15 Years Old or Younger  
[Ed.1]

**STATUTE**

§ 14-27.7A. Statutory rape or sexual offense of person who is ~~13, 14, or 15 years old~~ of age or younger.

**DESCRIPTION**

A person who

1. engages in vaginal intercourse or a sexual act
2. with another person who is 15 years of age or younger, and
3. the defendant is at least six years older than the person, and
4. is not lawfully married to the 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.

Currently, G.S. 14-27.7A applies to victims that are 13, 14, or 15 years of age.

A person is guilty of first degree rape if the victim is under the age of 13 and the defendant engages in sexual intercourse (G.S. 14-27.2A); a person is guilty of sex offense with a child if the victim is under the age of 13 and the defendant is 18 or older and engages in a sexual act (G.S. 14-27.5); a person is guilty of a first-degree sexual offense if the victim is under the age of thirteen, the defendant is 12 years old or older and at least four years older than the victim and engages in a sexual act (G.S. 14-27.4). All of these provisions are classified as Class B1 felonies.

**FINDINGS**

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

**DATE OF REVIEW:** 4/24/15

**BILL CONTINUED ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 418 – Amend Statutory Rape/15 Years Old or Younger  
[Ed.1] (cont'd)

**STATUTE**

§ 14-27.7A. Statutory rape or sexual offense of person who is ~~13, 14, or 15 years old~~ of age or younger.

**DESCRIPTION**

A person who

1. engages in vaginal intercourse or a sexual act
2. with another person who is 15 years of age or younger, and
3. the defendant is more than four but less than six years older than the person, and
4. is not lawfully married to the 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.

Currently, G.S. 14-27.7A applies to victims that are 13, 14, or 15 years of age.

A person is guilty of first degree rape if the victim is under the age of 13 and the defendant engages in sexual intercourse (G.S. 14-27.2A); a person is guilty of sex offense with a child if the victim is under the age of 13 and the defendant is 18 or older and engages in a sexual act (G.S. 14-27.5); a person is guilty of a first-degree sexual offense if the victim is under the age of thirteen, the defendant is 12 years old or older and at least four years older than the victim and engages in a sexual act (G.S. 14-27.4). All of these provisions are classified as Class B1 felonies.

**FINDINGS**

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

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**SB 418: AMEND STATUTORY RAPE/15 YEARS OLD OR YOUNGER**

*PREPARED: MARCH 26, 2015*

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

This bill expands the scope of two existing felony offenses by adding offenses where the victim is less than 13 years old.

**§ 14-27.7A. Statutory rape or sexual offense of person who is 15 years of age or younger.**

Subsection (a) currently makes it a Class B1 felony if an offender engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the offender is at least six years older than the person. This bill would expand the offense to include offenders who engage in vaginal intercourse or a sexual act with another person who is less than 13 years of age and the offender is at least six years older than the person. The offense would continue to be a Class B1 felony.

There were 39 Class B1 convictions under Subsection (a) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, all Class B1 offenders are required to receive an active sentence. In FY 2013/14 the average estimated time served for an offender convicted of a Class B1 offense was 243 months. If, for example, there was one additional 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. Twelve months of post-release supervision is required upon release from prison for an active sentence.

This conduct is currently covered by G.S. 14-27.2, First-degree rape, and G.S. 14-27.4, First-degree sexual offense. Under subdivision (a)(1) of G.S. 14-27.2, it is a Class B1 felony for an offender to engage in vaginal intercourse with a victim who is a child under the age of 13 years and the offender is at least 12 years old and is at least four years older than the victim. Under subdivision (a)(1) of G.S. 14-27.4, it is a Class B1 felony for an offender to engage in a sexual act with a victim who is a child under the age of 13 years and the offender is at least 12 years old and is at least four years older than the victim. In FY 2013/14, there were 8 convictions for violations of G.S. 14-27.2(a)(1) and 43 convictions for violations of G.S. 14-27.4(a)(1). Since these offenses are Class B1 felonies, the proposed expansion of G.S. 14-27.7A is not expected to cause a change in the violations of G.S. 14-27.2(a)(1) and G.S. 14-27.4(a)(1).

This conduct is also currently covered by G.S. 14-27.2A, Rape of a child; adult offender, and G.S. 14-27.4A, Sexual offense with a child; adult offender. Under G.S. 14-27.2A, it is a Class B1 felony for an offender to rape a child if the offender is at least 18 years old and the victim is under the age of 13 years. Under G.S. 14-27.4A, it is a Class B1 felony for an offender to engage in a sexual act with a child if the offender is at least 18 years old and the victim is under the age of 13 years. In FY 2013/14, there were 2 convictions for violations of G.S. 14-27.2A and 6 convictions for violations of G.S. 14-27.4A. Both of these offenses are subject to a mandatory minimum sentence of at least 300 months. No change is expected for violations of G.S. 14-27.2A and G.S. 14-27.4A due to the proposed expansion of the victim's age in Subsection (a).

Subsection (b) currently makes it a Class C felony for an offender to engage in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the offender is more than four but less than six years older than the person. This bill would expand the offense to include offenders who engage in vaginal intercourse or a sexual act with another person who is less than 13 years of age and the offender is more than four but less than six years older than the person, unless the conduct is covered under some other provision of law providing greater punishment. The offense would continue to be a Class C felony.

There were 7 Class C convictions under Subsection (b) in FY 2013/14. It is not known how many additional convictions may result from the proposed broadening of the current statute. Under Structured Sentencing, all Class C offenders are required to receive an active sentence.<sup>1</sup> In FY 2013/14 the average estimated time served for an offender convicted of a Class C offense was 78 months. If, for example, there was one additional 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. Twelve months of post-release supervision is required upon release from prison for an active sentence.

This conduct is currently covered by G.S. 14-27.2, First-degree rape, and G.S. 14-27.4, First-degree sexual offense. Under subdivision (a)(1) of G.S. 14-27.2, it is a Class B1 felony for an offender to engage in vaginal intercourse with a victim who is a child under the age of 13 years and the offender is at least 12 years old and is at least four years older than the victim. Under subdivision (a)(1) of G.S. 14-27.4, it is a Class B1 felony for an offender to engage in a sexual act with a victim who is a child under the age of 13 years and the offender is at least 12 years old and is at least four years older than the victim. In FY 2013/14, there were 8 convictions for violations of G.S. 14-27.2(a)(1) and 43 convictions for violations of G.S. 14-27.4(a)(1). Since these offenses are Class B1 felonies, the proposed expansion of G.S. 14-27.7A is not expected to cause a change in the violations of G.S. 14-27.2(a)(1) and G.S. 14-27.4(a)(1).

### *Possible Juvenile Impact*

If a juvenile offender engages in vaginal intercourse or a sexual act with another person and the offender is more than four years older than the person but is under the age of 12 years, he cannot be charged under G.S. 14-27.2(a)(1) or G.S. 14-27.4(a)(1). It is possible the offender would currently be charged under G.S. 14-202.2, Indecent liberties between children (Class 1 misdemeanor – Minor offense classification), G.S. 14-27.5A, Sexual battery (Class A1 – Serious offense classification), or G.S. 14-177, Crime against nature (Class I felony – Serious offense classification). If the juvenile offender is found to be delinquent under the proposed expansion of G.S. 14-27.7A, it would be a Class B1 or C felony (Violent offense classification). In the juvenile disposition chart, the more serious the classification of the offense is, the more restrictive the dispositional options that are available (*e.g.*, residential treatment, Youth Development center (YDC) commitment). YDC bed impact would occur if any of the juveniles were adjudicated delinquent under the proposed G.S. 14-27.7A and received a Level 3 disposition.

Effective December 1, 2015, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

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<sup>1</sup> If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

**NORTH CAROLINA 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 419 – Limit Revolving Door Employment [Ed.1]

**STATUTE**

§ 143-59.5. Contracts with vendors that hire former State employees.

**DESCRIPTION**

A person who

1. is a vendor submitting a bid or contract to the Secretary of Administration, and
2. submits a certification stating that the vendor will not use a former State employee in the administration of a contract with the State, and
3. knows the certification to be false.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

Punishment for making a false statement is a Class I felony. (G.S. 58-2-180)

Punishment for violation of the Administration of Employment Benefits provisions is a Class I felony. (G.S. 96-18)

**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:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**SB 419: LIMIT REVOLVING DOOR EMPLOYMENT**

*PREPARED: APRIL 14, 2015*

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

This bill creates a new Class I felony.

This bill enacts G.S. 143-59.5. Contracts with vendors that hire former State employees. Subsection (b) of this bill makes it a Class I felony for a vendor to submit a certification required by this statute knowing the certification to be false.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Effective October 1, 2015, and applies to contracts entered into on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 609 – Mandate Use/Controlled Sub. Reporting System  
[Ed.1]

**STATUTE**

§ 90-113.74A. Mandatory use of controlled substances reporting system.

**DESCRIPTION**

A person who

1. is authorized to prescribe or dispense a controlled substance for the purpose of providing medical or pharmaceutical care for a patient,
2. intentionally
3. fails to review all information pertaining to the patient in the controlled substance reporting system for the preceding 12-month period to determine if the prescription is medically necessary and appropriate
4. prior to the prescribing or dispensing of a controlled substance.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

If the criminal pleading does not allege the violation was committed intentionally, or it is not found at trial that the violation was intentional, the offense is a Class 1 misdemeanor.

The intentional distribution or dispensing of a controlled substance by a practitioner in violation of the North Carolina Controlled Substance Act is guilty of a Class I felony. (G.S. 90-108)

Manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance is a Class I felony (G.S. 90-95(b)(2)).

**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:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 630 – PI Access to Criminal Court Records [Ed.1]

**STATUTE**

§ 74C-24. Private Investigator access to criminal court records.

**DESCRIPTION**

Subdivision (g)(1):

A person who

1. willfully
2. accesses the information systems of the Administrative Office of the Courts (AOC)
3. by means of an online identifier
4. that was assigned to another individual by AOC.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

Computer trespass, which is the unauthorized use of a computer or computer network with the intent to make an unauthorized copy of computer data, programs or software residing in or produced by a computer or computer network, is a Class 3 misdemeanor. If there is damage to property and the damage is valued at less than \$2,500, it is a Class 1 misdemeanor; damage in the amount at or above \$2,500 is a Class I felony. (G.S. 14-458(a)(5))

**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 serious property loss or societal injury as Class I felonies.

Note: This offense may also be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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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 630 – PI Access to Criminal Court Records [Ed.1] (cont'd)

**STATUTE**

§ 74C-24. Private Investigator access to criminal court records.

**DESCRIPTION**

Subdivision (g)(2):

A person who

1. is a private investigator, and
2. is granted access to the AOC's real-time criminal information systems,
3. willfully allows any other person, directly or indirectly,
4. to make use of access granted to the private investigator.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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 serious property loss or societal injury as Class I felonies.

Note: This offense may also be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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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 630 – PI Access to Criminal Court Records [Ed.1] (cont'd)

**STATUTE**

§ 74C-24. Private Investigator access to criminal court records.

**DESCRIPTION**

Subdivision (g)(3):

A person who

1. is a private investigator, and
2. has been granted access to the AOC's real-time criminal information systems, and
3. makes use of that access at any time when the private investigator knows or has reason to know that the investigator's license issued under this Article is in a state of suspension or revocation.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

**FINDINGS**

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

Bill is **inconsistent** with 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 serious property loss or societal injury as Class I felonies.

Note: This offense may also be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

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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 630 – PI Access to Criminal Court Records [Ed.1] (cont'd)

**STATUTE**

§ 74C-24. Private Investigator access to criminal court records.

**DESCRIPTION**

Subdivision (g)(4):

A person who

1. is a private investigator granted access to the AOC information system
2. to distribute, in any medium or manner,
3. information obtained from the information systems of the AOC
4. to any person
5. for any reason not directly related to the evaluation of the individual to whom the information pertains for the purposes of criminal records history checks
6. without the express written consent of that individual.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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 serious property loss or societal injury as Class I felonies.

Note: This offense may also be consistent with a Class 1 misdemeanor.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 646 – Unlawful to Assist Another to Commit Suicide [Ed.1]

**STATUTE**

§ 14-17.2. Assisted suicide.

**DESCRIPTION**

A person who

1. for remuneration
2. intentionally assists another individual
3. to commit suicide.

**PROPOSED OFFENSE CLASS**

Class D felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

For the purposes of this section, “suicide” means the intentional and willful termination of one’s own life.

Voluntary manslaughter is a Class D felony. (G.S. 14-18).

SB 646 includes a provision that makes it a Class 1 misdemeanor to manufacture, sell, distribute, or possess a euthanasia device.

**FINDINGS**

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

Note: It is not clear whether the individual assisted must die for another person to violate this offense.

**DATE OF REVIEW:** 4/24/15

**IMPACT ANALYSIS NOT REQUESTED YET**

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

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

**BILL NUMBER/SHORT TITLE:** SB 652 – Prohibit Re-Homing of an Adopted Minor Child  
[Ed.1]

**STATUTE**

§ 48-10-106. Re-homing of an adopted minor child.

**DESCRIPTION**

Subdivision (a)(1):

A person who

1. is an adoptive parent, and
2. a. advertises, recruits, or solicits or  
b. aids, abets, conspires, or  
c. seeks the assistance of another to advertise, recruit, or solicit for
3. the re-homing of that parent’s minor adopted child.

**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.

Re-homing is defined as the permanent transfer of physical custody of an adopted minor child by the child’s parent, without a court order, to a person other than the child’s stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, or great-grandparent.

Unlawful sale, surrender, or purchase of a minor is a Class F felony. (G.S. 14-43.14)

Violation of the Article 37- Placing or Adoption of Juvenile Delinquents or Dependents is a Class 2 misdemeanor. (G.S. 7B-3703)

**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:** 4/24/15

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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 652 – Prohibit Re-Homing of an Adopted Minor Child  
[Ed.1] (cont'd)

**STATUTE**

§ 48-10-106. Re-homing of an adopted minor child.

**DESCRIPTION**

Subdivision (a)(2):

A person who

1. is an adoptive parent, and
2. knowingly and willfully
3. responds to an advertisement or solicitation by another seeking to either
  - a. take physical custody of the adopted minor child or
  - b. facilitate the re-homing of the adopted minor child.

**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.

Re-homing is defined as the permanent transfer of physical custody of an adopted minor child by the child’s parent, without a court order, to a person other than the child’s stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, or great-grandparent.

Unlawful sale, surrender, or purchase of a minor is a Class F felony. (G.S. 14-43.14)

Violation of the Article 37- Placing or Adoption of Juvenile Delinquents or Dependents is a Class 2 misdemeanor. (G.S. 7B-3703)

**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:** 4/24/15

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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 652 – Prohibit Re-Homing of an Adopted Minor Child  
[Ed.1] (cont'd)

**STATUTE**

§ 48-10-106. Re-homing of an adopted minor child.

**DESCRIPTION**

Subsection (b):

A person who

1. transfers and
2. re-homes an adopted minor child.

**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.

Re-homing is defined as the permanent transfer of physical custody of an adopted minor child by the child's parent, without a court order, to a person other than the child's stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, or great-grandparent.

Unlawful sale, surrender, or purchase of a minor is a Class F felony. (G.S. 14-43.14)

Violation of the Article 37- Placing or Adoption of Juvenile Delinquents or Dependents is a Class 2 misdemeanor. (G.S. 7B-3703)

**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:** 4/24/15

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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 652 – Prohibit Re-Homing of an Adopted Minor Child  
[Ed.1] (cont'd)

**STATUTE**

§ 48-10-106. Re-homing of an adopted minor child.

**DESCRIPTION**

Subsection (c):

A person who

1. advertises, solicits, recruits, transports, receives, or obtains or facilitates, assists or arranges for the transfer of an adopted minor child
2. for the purpose of re-homing the minor child.

**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.

Re-homing is defined as the permanent transfer of physical custody of an adopted minor child by the child's parent, without a court order, to a person other than the child's stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, or great-grandparent.

Unlawful sale, surrender, or purchase of a minor is a Class F felony. (G.S. 14-43.14)

Violation of the Article 37- Placing or Adoption of Juvenile Delinquents or Dependents is a Class 2 misdemeanor. (G.S. 7B-3703)

**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:** 4/24/15

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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 652 – Prohibit Re-Homing of an Adopted Minor Child  
[Ed.1] (cont'd)

**STATUTE**

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

**DESCRIPTION**

A person who

1. willfully
2. participates in re-homing an adopted minor child.

**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.

Re-homing is defined as the permanent transfer of physical custody of an adopted minor child by the child's parent, without a court order, to a person other than the child's stepparent, grandparent, adult sibling, aunt, uncle, first cousin, great-aunt, great-uncle, or great-grandparent.

Unlawful sale, surrender, or purchase of a minor is a Class F felony. (G.S. 14-43.14)

Violation of the Article 37- Placing or Adoption of Juvenile Delinquents or Dependents is a Class 2 misdemeanor. (G.S. 7B-3703)

**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:** 4/24/15

**IMPACT ANALYSIS ON NEXT PAGE**

# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## SB 652: PROHIBIT RE-HOMING OF AN ADOPTED MINOR CHILD

*PREPARED: APRIL 21, 2015*

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

This bill creates a new Class F felony offense and expands an existing Class F felony offense.

**SECTION 3.** This section enacts G.S. 48-10-106, Re-homing of an adopted minor child. This statute prohibits various activities related to private re-homing of minor adopted children. Violation is a Class F felony.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2013/14, 51% of Class F convictions resulted 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, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

**SECTION 6.** This section amends the existing G.S. 14-43.14, Unlawful sale, surrender, or purchase of a minor, to expand the scope of the offense to include a person who willfully participates in re-homing an adopted minor child. Violation is a Class F felony.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-43.14. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2013/14, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 17 months. If, for example, there were two additional Class F convictions per year as a result of the proposed broadening of the current statute, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Effective when it becomes law.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2013/14 Structured Sentencing Simulation Data