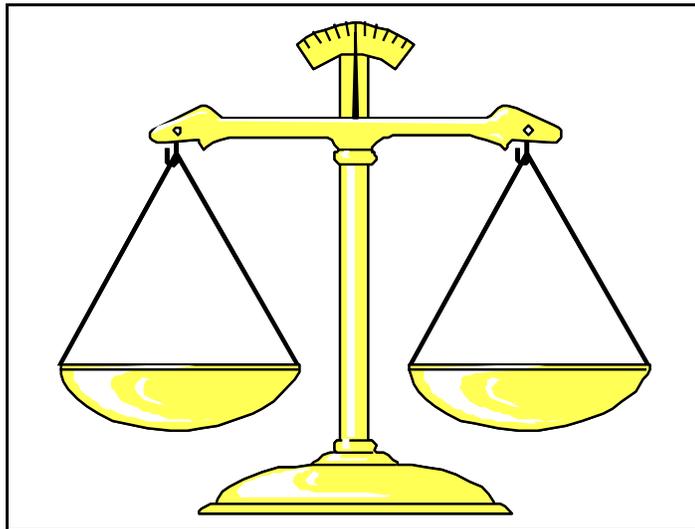


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2017 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
MARCH 2017***

**THE HONORABLE W. ERWIN SPAINHOUR
CHAIRMAN**

**MICHELLE HALL
EXECUTIVE DIRECTOR**

**NC SENTENCING AND POLICY ADVISORY COMMISSION
MEMBERSHIP**

Hon. W. Erwin Spainhour, Chairman
Superior Court Judge

Art Beeler
Lieutenant Governor's Appointee

Hon. Maureen Krueger
NC Conference of District Attorneys

Hon. Charles E. Brown
NC District Court Judges' Association

Iona Kusa
NC Victim Assistance Network

Sheriff James E. Clemmons
NC Sheriffs' Association

Hon. Floyd McKissick
State Senator

Lisa Costner
NC Bar Association

Dr. Harvey Lee McMurray
Academic Member

Hon. Warren Daniel
State Senator

Hon. Allen McNeill
State Representative

Louise Davis
NC Community Sentencing Association

Robert C. Montgomery
NC Attorney General's Office

Judge Richard A. Elmore
NC Court of Appeals

Luther Moore
NC Retail Merchants' Association

Judge Robert C. Ervin
NC Conference of Superior Court Judges

Judge Fred G. Morrison, Jr.
Justice Fellowship

Hon. John Faircloth
State Representative

Hon. Shirley B. Randleman
State Senator

Christopher Fialko
NC Advocates for Justice

Hon. June Ray
NC Association of Clerks of Superior Court

Willis Fowler
*NC Post-Release Supervision & Parole
Commission*

Billy J. Sanders
Commission Chairman's Appointee

David Guice
NC Department of Public Safety

Hon. Thomas Thompson
NC Association of County Commissioners

Hon. Darren Jackson
State Representative

(Vacant)
NC Association of Chiefs of Police

(Vacant)
Private Citizen, Governor's Appointee

NC SENTENCING AND POLICY ADVISORY COMMISSION

STAFF

Michelle Hall

Executive Director

John Madler

Associate Director for Policy, Staff Attorney

Ginny Hevener

Associate Director for Research

Tamara Flinchum

Senior Research & Policy Associate

Rebecca Murdock

Senior Research & Policy Associate

Sara Perdue

Senior Research & Policy Associate

John King

Research & Policy Associate

Jennifer Wesoloski

Research & Policy Associate

Shelley Kirk

Administrative Secretary

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

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 February 23, 2017. The report is submitted in conformance with the following requirements of G.S. 164-43:

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

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

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

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

A one page summary is included for each bill (or each relevant section of a bill) which either creates a new crime, changes the classification of an existing crime, or prescribes a new range of punishments. The summary provides the bill number, the short title, and a brief description. At the bottom of the summary is an analysis and a finding of whether the bill appears consistent with the Commission's classification criteria as specified in G.S. 164-41 (*see* following page for a description of the criteria). Following the summary is an analysis of the projected impact of the bill (a more detailed impact analysis is provided to the Fiscal Research Division). The impact estimates assume an effective date of December 1, 2017.

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 February 24, 2017.

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
FEBRUARY 24, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 63 [Ed.1]	Citizens Protection Act of 2017	14-100.1	G	Inconsistent	Would be consistent with a Class I felony.	1
		20-30(2)	G	Inconsistent	Would be consistent with a Class I felony.	2
		20-30(7)	G	Inconsistent	Would be consistent with a Class I felony.	3
HB 65 [Ed.1]	Require Active Time Felony Death MV/Boat	20-141.4	Require special probation	Inconsistent		4
		75A-10.3	Require special probation	Inconsistent		5
HB 69 [Ed.1]	Constitutional Carry Act	14-415.35	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	6
HB 78 [Ed.1]	HB2 Repeal/Equality for All	15A-1340.16E	Increase minimum term	Inconsistent	Could be an aggravating factor.	7
		14-27.33	I	Inconsistent	Would be consistent with a Class H felony.	8
HB 107 [Ed.1]	Common Sense Compromise to Repeal HB 2	15A-1340.16E	Increase minimum term	Inconsistent	Could be an aggravating factor.	9
HB 128 [Ed.1]	Prohibit Drone Use Over Prison/Jail	15A-300.3(b)(1)	H	Consistent		10
		15A-300.3(b)(2)	I	Consistent		11
HB 138 [Ed.1]	Revise Gang Laws	15A-1340.16E(a)	Sentence one class higher	Inconsistent		12
		15A-1340.16E(b)	Sentence two classes higher	Inconsistent		13
		14-50.19	F	Consistent		14
		14-50.20	F	Consistent		15

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.

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 152 [Ed.1]	Hate Crime/Increase Scope & Penalty	14-34.11(c)	F	Consistent		16
		14-34.11(d)(1)	E	Inconsistent	Would be consistent with a Class B felony.	17
		14-34.11(d)(2)	E	Consistent		18
HB 181 [Ed.1]	First Responders Act of 2017	14-401.14A(b)	H	Inconsistent	Would be consistent with a Class F felony.	19
		14-401.14A(c)	F	Consistent		20
		14-401.14A(d)	E	Inconsistent	Would be consistent with a Class F felony.	21
HB 186 [Ed.1]	Repeal HB2/State Nondiscrimination Policies	15A-1340.16E	One class higher	Inconsistent	Could be an aggravating factor.	22
		14-202	I	Inconsistent	Would be consistent with a Class H felony.	23
		14-277.3A	H	Consistent		24
		14-27.33(c)	I	Inconsistent	Would be consistent with a Class H felony.	25
SB 28 [Ed.1]	Electronic Pawn & Metals Database	66-421(c)	I	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	26
SB 93 [Ed.1]	Common Sense Compromise to Repeal HB 2	15A-1340.16E	Increase minimum term	Inconsistent	Could be an aggravating factor.	9
SB 109 [Ed.1]	Hate Crime Against Emergency Worker	14-34.11(c)	H	Consistent		27
		14-34.11(d)	F	Consistent		28
		14-34.11(e)	E	Inconsistent		29
		14-34.11(f)	Punish one class higher	Inconsistent		30

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 63 – Citizens Protection Act of 2017 [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (a)

A person who

1. knowingly manufactures or sells,
2. a false or fraudulent form of identification as defined in this section,
3. for the purpose of deception, fraud, or other criminal conduct.

PROPOSED OFFENSE CLASS

Class G felony

ANALYSIS

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

It is a Class 1 misdemeanor to knowingly possess or manufacture certain fraudulent forms of identification. Amended G.S. 14-100.1(e) provides that a violation based on the mere possession of a false or fraudulent form of identification remains a Class 1 misdemeanor.

This provision is similar to a provision in HB 328 which the Commission reviewed in April 2015. The Commission found the provision to be inconsistent with the Offense Classification Criteria and noted that it would be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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: 2/24/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 63 – Citizens Protection Act of 2017 [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (2):

A person who

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

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.

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.

Amended Subsection (2) also 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.

This provision is similar to a provision in HB 328 which the Commission reviewed in April 2015. The Commission found the provision to be inconsistent with the Offense Classification Criteria and noted that it would be consistent with the Offense Classification Criteria for a Class I felony and that it may also be consistent with a Class 1 or 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: 2/24/17

BILL CONTINUED ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 63 – Citizens Protection Act of 2017 [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (7):

A person who

1. sells or offers for sale,
2. any reproduction or facsimile or simulation of,
3. a driver’s license, learner’s permit, 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. 20-30(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.

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.

This provision is similar to a provision in HB 328 which the Commission reviewed in April 2015. The Commission found the provision to be inconsistent with the Offense Classification Criteria and noted that it would be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

Bill is **inconsistent** with 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: 2/24/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 65 – Req. Active Time Felony Death MV/Boat [Ed.1]

STATUTE

§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.

DESCRIPTION

Subsection (a1):

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired driving, and
3. the commission of that offense is the proximate cause of the death.

PUNISHMENT RANGE

CURRENT: Class D felony. Notwithstanding the felony punishment chart, which requires an active sentence, an intermediate punishment is authorized for a defendant who is in Prior Record Level I.

PROPOSED: If an intermediate punishment is imposed, it shall include special probation (split sentence) with a continuous period of confinement of one-fourth of the maximum sentence imposed (up to 27 months).

ANALYSIS

Intermediate punishment requires an offender be placed on supervised probation, it may include special probation. G.S. 15A-1340.11(6).

Special probation may be a continuous period or more than one noncontinuous period of confinement and it may be up to one-fourth of the maximum sentence imposed. G.S. 15A-1351(a).

SB 105 of the 2012 Session reclassified felony death by vehicle from a Class E felony to a Class D felony and authorized the intermediate punishment for offenders in Prior Record Level I. The Sentencing Commission did not review the final version of that bill.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE OF REVIEW: 02/24/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 65 – Req. Active Time Felony Death MV/Boat [Ed.1]
(cont'd)

STATUTE

§ 75A-10.3. Death or serious injury by impaired boating; repeat offenses.

DESCRIPTION

Subsection (a):

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired boating, and
3. the commission of that offense is the proximate cause of the death.

PUNISHMENT RANGE

CURRENT: Class D felony. Notwithstanding the felony punishment chart, which requires an active sentence, an intermediate punishment is authorized for a defendant who is in Prior Record Level I.

PROPOSED: If an intermediate punishment is imposed, it shall include special probation (split sentence) with a continuous period of confinement of one-fourth of the maximum sentence imposed (up to 27 months).

ANALYSIS

Intermediate punishment requires an offender be placed on supervised probation, it may include special probation. G.S. 15A-1340.11(6).

Special probation may be a continuous period or more than one noncontinuous period of confinement and it may be up to one-fourth of the maximum sentence imposed. G.S. 15A-1351(a).

HB 958 of the 2016 Session created the offense of death by impaired boating, classified it as a Class D felony, and authorized the intermediate punishment for offenders in Prior Record Level I. The Sentencing Commission reviewed that provision on June 3, 2016, and found it to be inconsistent with the Homicide Offense Classification Criteria. The Commission noted that it could be consistent with the Homicide Offense Classification Criteria for a Class E felony and that, under Structured Sentencing, an Active punishment is required for offenders convicted of a Class D offense. Authorizing an Intermediate punishment for a Prior Record Level I offender convicted of this offense is inconsistent with Structured Sentencing.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE OF REVIEW: 02/24/17

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 69 – Constitutional Carry Act [Ed. 1]

STATUTE

§ 14-415.35. Carrying concealed handguns.

DESCRIPTION

Subdivision (g)(1):

A person who

1. meets any of the criteria enumerated in subsection (e), and
2. carries a concealed handgun.

PROPOSED OFFENSE CLASS

Class H felony, second and subsequent offenses.

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(e) provides the list of persons for whom it is unlawful to carry a concealed weapon, that list includes but is not limited to, persons under indictment for a felony; persons adjudicated guilty of a felony unless that offense pertains to antitrust violations, unfair trade practices, or restraints of trade, or his firearms rights have been restored; fugitives from justice; drug addicts; persons dishonorably discharged from the military; and persons convicted of impaired driving offenses within last three years.

A first violation of this provision is a Class 2 misdemeanor.

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: 2/24/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 78 – HB2 Repeal/Equality for All [Ed. 1]

STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant committed certain offenses in a changing facility.

DESCRIPTION

Subsection (b) creates a sentence enhancement for a person who:

1. is convicted of any of the following felonies
 - a. G.S. 14-27.21 (First degree forcible rape, Class B1 felony),
 - b. G.S. 14-27.26 (First degree forcible sexual offense, Class B1 felony),
 - c. G.S. 14-27.22 (Second degree forcible rape, Class C felony),
 - d. G.S. 14-27.27 (Second degree forcible sexual offense, Class C felony),
 - e. G.S. 14-202.1 (Taking indecent liberties with children, Class F felony),
 - f. G.S. 14-202.4 (Taking indecent liberties with a student, Class I felony), and
2. the felony was committed in a changing facility that is designated for the opposite sex.

PUNISHMENT RANGE

CURRENT: Minimum term based on the class of the offense and the offender’s prior record as provided by G.S. 15A-1340.17.

PROPOSED:

For violations of G.S. 14-27.21 or 14-27.26, the minimum term of imprisonment shall be increased by 84 months. For violations of G.S. 14-27.22 or 14-27.27, the minimum term of imprisonment shall be increased by 60 months. For violations of G.S. 14-202.1 or 14-202.4, the minimum term of imprisonment shall be increased by 36 months.

The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by the specified term.

ANALYSIS

FINDINGS

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

Adding months to the minimum term could cause an offender to receive a minimum term that is longer than what is authorized for the class of the offense and the offender’s prior record level, which makes it inconsistent with Structured Sentencing. Committing an offense in a public changing facility could be an aggravating factor; it would increase the minimum term but not beyond what is authorized for that prior record level.

DATE OF REVIEW: 2/24/17

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 78 – HB2 Repeal/Equality for All [Ed. 1] (cont'd)

STATUTE

§ 14-27.33. Sexual Battery.

DESCRIPTION

Subsection (c):

A person who

1. commits the offense of sexual battery
2. while in a changing facility
3. that is designated for the opposite sex.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

1. By force and against the will of the other person; or
2. Who is mentally disabled, incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

Sexual battery 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 H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury as Class H felonies.

DATE OF REVIEW: 2/24/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 107/SB 93 – Common Sense Compromise to Repeal HB 2 [Ed. 1]

STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant committed certain felony offenses in a public changing facility or a changing facility in a place of public accommodations.

DESCRIPTION

Subsection (b) creates a sentence enhancement for a person who:

1. is convicted of any of the following felonies:
 - a. G.S. 14-27.22 (Second degree forcible rape, Class C felony);
 - b. G.S. 14-27.27 (Second degree forcible sexual offense, Class C felony);
 - c. G.S. 14-190.9(a1) (Indecent exposure for purpose of arousing sexual desire, Class H felony);
 - d. G.S. 14-202(d), (e), or (f) (Secretly peeping into room occupied by another person, Class I felony);
 - e. G.S. 14-202(g) or (h) (Possession or dissemination of photographs or images that the person knows or should have known were obtained by secret peeping and the images were taken in a public changing facility or changing facility in a place of public accommodations, Class I or H felony, respectively);
 - f. G.S. 14-202.1 (Taking indecent liberties with children, Class F felony);
 - g. G.S. 14-202.4 (Taking indecent liberties with a student, Class I felony);
 - h. G.S. 14-277.3A (Felony stalking offense, if the person is convicted of either a Class H or Class F felony); and
2. the felony was committed in a public changing facility or in a changing facility in a place of public accommodations.

PUNISHMENT RANGE

CURRENT: Minimum term based on the class of the current offense and the offender’s prior record as provided by G.S. 15A-1340.17.

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

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

Adding six months to the minimum term could cause an offender to receive a minimum term that is longer than what is authorized for the class of the offense and the offender’s prior record level, which makes it inconsistent with Structured Sentencing. Committing an offense in a public changing facility could be an aggravating factor; it would increase the minimum term but not beyond what is authorized for that prior record level.

DATE OF REVIEW: 2/24/17

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 128 – Prohibit Drone Use Over Prison/Jail [Ed.1]

STATUTE

§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional facility prohibited.

DESCRIPTION

Subdivision (b)(1):

A person who

1. uses an unmanned aircraft system,
2. in violation of G.S. 15A-300.3(a),
3. for the purpose of
4. delivering a weapon (as defined in G.S. 14-401.24)
5. to a local confinement facility, or State or federal correctional facility.

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. 15A-300.3(a) provides that except for law enforcement officers using an unmanned aircraft system as allowed by law, no person, entity, or State agency shall use an unmanned aircraft system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any local confinement facility or State or federal correctional facility unless (i) written consent is obtained from the official in responsible charge of the facility and (ii) use of the unmanned aircraft system is not otherwise prohibited under State or federal law.

It is a Class H felony for any person to give or sell to any inmate any deadly weapon, or any cartridge or ammunition for firearms of any kind. G.S. 14-258.1(a).

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: 2/24/17

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 128 – Prohibit Drone Use Over Prison/Jail [Ed.1] (cont'd)

STATUTE

§ 15A-300.3. Use of an unmanned aircraft system near a confinement or correctional facility prohibited.

DESCRIPTION

Subdivision (b)(2):

A person who

1. uses an unmanned aircraft system,
2. in violation of G.S. 15A-300.3(a)
3. for the purpose of
4. delivering contraband
5. to a local confinement facility, or State or federal correctional facility.

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.

For purposes of this subdivision, the term “contraband” includes controlled substances, as defined in G.S. 90-87, cigarettes, alcohol, and communication devices, but does not include weapons.

G.S. 15A-300.3(a) provides that except for law enforcement officers using an unmanned aircraft system as allowed by law, no person, entity, or State agency shall use an unmanned aircraft system within a horizontal distance of 500 feet or a vertical distance of 250 feet from any local confinement facility or State or federal correctional facility unless (i) written consent is obtained from the official in responsible charge of the facility and (ii) use of the unmanned aircraft system is not otherwise prohibited under State or federal law.

It is a Class H felony for any person to give or sell to any inmate any controlled substance or a mobile telephone or other wireless communications device, it is a Class 1 misdemeanor for any person to give or sell to any inmate alcoholic beverages or tobacco products, including vapor products. G.S. 14-258.1(b) - (d).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 2/24/17

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 138 – Revise Gang Laws [Ed. 1]

STATUTE

§ 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity.

DESCRIPTION

Subsection (a):

A person who

1. is convicted of any felony other than Class A, B1, or B2, and
2. committed the offense as part of criminal gang activity as defined in statute.

PUNISHMENT RANGE

CURRENT: Sentenced according to the class of the felony offense for which the person was convicted.

PROPOSED: Sentenced one class higher than the principal felony for which the person was convicted but no higher than a Class C felony.

ANALYSIS

This provision is similar to provisions in HB 50 which the Commission reviewed in March, 2005, HB 274 which the Commission reviewed in March, 2007, and SB 1358 which the Commission reviewed in June, 2007. The Commission found those provisions to be inconsistent with G.S. 164-41 and noted that there is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16(d)(2a)).

It is a Class H felony if a person who is employed by or associated with a criminal street gang: (1) conducts or participates in a pattern of criminal street gang activity; or (2) acquires or maintains any interest in or control of any real or personal property through a pattern of criminal street gang activity. G.S. 14-50.16(a). The bill would repeal this offense.

There is a one class enhancement for misdemeanor criminal gang activity. G.S. 14-50.22.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Note: There is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang. G.S. 15A-1340.16(d)(2a).

DATE OF REVIEW: 2/24/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 138 – Revise Gang Laws [Ed. 1] (cont'd)

STATUTE

§ 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity.

DESCRIPTION

Subsection (b):

A person who

1. is convicted of any felony other than Class A, B1, or B2,
2. committed the offense as part of criminal gang activity as defined in statute, and
3. is found to be a criminal gang leader or organizer as defined in statute.

PUNISHMENT RANGE

CURRENT: Sentenced according to the class of the felony offense for which the person was convicted.

PROPOSED: Sentenced two classes higher than the principal felony for which the person was convicted but no higher than a Class C felony.

ANALYSIS

It is a Class F felony if a person who is employed by or associated with a criminal street gang conducts or participates in a pattern of criminal street gang activity and is an organizer, supervisor, or acts in any other position of management with regard to the criminal street gang (G.S. 14-50.16(a)). The bill would repeal this offense.

There is an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang. G.S. 15A-1340.16(d)(2a).

There is an aggravating factor that applies when a defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants. G.S. 15A-1340.16(d)(1).

There is a one class enhancement for misdemeanor criminal gang activity. G.S. 14-50.22.

FINDINGS

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

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

G.S. 164-41 is not applicable.

Note: There is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang. G.S. 15A-1340.16(d)(2a).

DATE OF REVIEW: 2/24/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 138 – Revise Gang Laws [Ed. 1] (cont'd)

STATUTE

§ 14-50.19. Threats to deter from gang withdrawal.

DESCRIPTION

A person who

1. communicates a threat
2. a. of injury to a person, or
b. to damage the property of another,
3. with the intent to deter a person from assisting another to withdraw from membership in a criminal gang.

OFFENSE CLASS

CURRENT: Class H felony.

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

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

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: 2/24/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 138 – Revise Gang Laws [Ed. 1] (cont'd.)

STATUTE

§ 14-50.20. Threats of punishment or retaliation.

DESCRIPTION

A person who

1. communicates a threat
2. a. of injury to a person, or
b. to damage the property of another,
3. as punishment or retaliation against a person for having withdrawn from a criminal gang.

OFFENSE CLASS

CURRENT: Class H felony.

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

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

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: 2/24/17

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 152 – Hate Crime/Increase Scope & Penalty [Ed. 1]

STATUTE

§ 14-34.11. Felonious assault as a hate crime.

DESCRIPTION

Subsection (c):

A person who

1. a. assaults a person and inflicts serious bodily injury, or
b. attempts to assault a person and inflict serious bodily injury
2. because of the actual or perceived race, color, religion, nationality, country of origin, gender, sexual orientation, gender identity, or disability of another person.

PROPOSED OFFENSE CLASS

Class F felony, unless otherwise provided by this section.

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.

Assault inflicting serious bodily injury to the person is a Class F felony. G.S. 14-32.4(a). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of that function of any bodily member or organ, or that results in prolonged hospitalization.

It is an aggravating factor if the offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin. G.S. 15A-1340.16(d)(17).

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit. G.S. 14-2.5. In *State v. Floyd*, the NC Supreme Court held that attempted assault is a crime. *See* 2016 N.C. LEXIS 1130.

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: 2/24/17

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 152 – Hate Crime/Increase Scope & Penalty [Ed. 1] (cont'd)

STATUTE

§ 14-34.11. Felonious assault as a hate crime.

DESCRIPTION

Subdivision (d)(1):

A person who

1. a. assaults a person and inflicts serious bodily injury, or
b. attempts to assault a person and inflict serious bodily injury
2. because of the actual or perceived race, color, religion, nationality, country of origin, gender, sexual orientation, gender identity, or disability of another person, and
3. death results from the offense.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as a Class E felony.

Voluntary manslaughter is a Class D felony. G.S. 14-18.

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

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 might be consistent with the Homicide Offense Classification Criteria for a Class B felony. The Sentencing Commission classified offenses which result from an intentional killing with malice as Class B felonies.

DATE OF REVIEW: 2/24/17

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 152 – Hate Crime/Increase Scope & Penalty [Ed. 1] (cont'd)

STATUTE

§ 14-34.11. Felonious assault as a hate crime.

DESCRIPTION

Subdivision (d)(2):

A person who

1. a. assaults a person and inflicts serious bodily injury, or
b. attempts to assault a person and inflict serious bodily injury
2. because of the actual or perceived race, color, religion, nationality, country of origin, gender, sexual orientation, gender identity, or disability of another person, and
3. the offense includes a violation or attempted violation of any of the following
 - a. G.S. 14-39 (kidnapping, Class C or Class E felony),
 - b. G.S. 14-27.21 (first degree forcible rape, Class B1 felony),
 - c. G.S. 14-27.22 (second degree forcible rape, Class C felony),
 - d. G.S. 14-27.26 (first degree forcible sexual offense, Class B1 felony),
 - e. G.S. 14-27 (second degree forcible sexual offense, Class C felony).

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.

Assault inflicting serious bodily injury to the person is a Class F felony. G.S. 14-32.4(a). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of that function of any bodily member or organ, or that results in prolonged hospitalization.

It is an aggravating factor if the offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin. G.S. 15A-1340.16(d)(17).

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: 2/24/17

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 181 – First Responders Act of 2017 [Ed.1]

STATUTE

§ 14-401.14A. Hate crime against emergency personnel.

DESCRIPTION

Subsection (b):

A person who

1. Assaults another person
2. because that person is emergency personnel, and
3. inflicts serious bodily injury on the first responder.

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 term “emergency personnel” includes law enforcement officers, firemen, ambulance attendance, utility workers, doctors, nurses and other persons lawfully engaged in providing essential services during an emergency. G.S. 14-288.9(b).

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

It is a Class F felony to assault another person and inflict serious bodily injury. G.S. 14-32.4(a).

It is a Class H felony to assault a firefighter, emergency medical technician, medical responder, or hospital personnel in the performance of his duties and inflict serious bodily injury. G.S. 14-34.6(b).

It is a Class F felony to assault a law enforcement, probation, or parole officer, member of the North Carolina National Guard, or a person employed at a State or local detention facility and inflict serious bodily injury. G.S. 14-34.7.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

Note: Current offenses that address assaults inflicting serious bodily injury on emergency personnel are classified in two different classes.

DATE OF REVIEW: 2/24/17

BILL CONTINUED ON NEXT PAGE

A finding that a bill is either consistent or inconsistent with the Sentencing Commission’s Offense Classification Criteria does not imply either support 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 181 – First Responders Act of 2017 [Ed.1] (cont’d)

STATUTE

§ 14-401.14A. Hate crime against emergency personnel.

DESCRIPTION

Subsection (c):

A person who

1. assaults another person
2. with a firearm
3. because the person is emergency personnel.

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.

The term “emergency personnel” includes law enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses and other persons lawfully engaged in providing essential services during an emergency. G.S. 14-288.9(b).

It is a Class E felony to assault another person with a deadly weapon and inflict serious injury. G.S. 14-32.

It is a Class F felony to assault, with a firearm, an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties. G.S. 14-34.2.

It is a Class E felony to assault, with a firearm, a law enforcement officer, probation officer, or parole officer while he is in the performance of his official duties. G.S. 14-34.5(a).

It is a Class F felony to assault, with a firearm, an EMT, a medical responder, or a firefighter, while he is in the performance of his duties. G.S. 14-34.6(c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 2/24/17

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 181 – First Responders Act of 2017 [Ed.1] (cont'd)

STATUTE

§ 14-401.14A. Hate crime against emergency personnel.

DESCRIPTION

Subsection (d):

A person who

1. with the intent of harming emergency personnel,
2. lures the emergency personnel to a location
3. a. by falsely reporting, or
b. having another individual falsely report
4. that emergency services are needed, and
5. then assaults the emergency personnel,
6. because he is emergency personnel.

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.

It is a Class A1 misdemeanor to assault an officer or employee of the State or any political subdivision of the State, while he is in the performance of his official duties. G.S. 14-33(c)(4).

It is a Class 2 misdemeanor to file a false report to a law enforcement agency or officer. G.S. 14-225.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 2/24/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 186 – Repeal HB2/State Nondiscrimination Policies [filed]

STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant committed certain offenses in a public changing facility or a changing facility in a place of public accommodation.

DESCRIPTION

Subsection (b) creates a sentence enhancement for a person who:

1. is convicted of any of the following felonies:
 - a. G.S. 14-27.22 (Second degree forcible rape, Class C felony);
 - b. G.S. 14-27.27 (Second degree forcible sexual offense, Class C felony);
 - c. G.S. 14-190.9(a1) (Indecent exposure for purpose of arousing sexual desire, Class H felony);
 - d. G.S. 14-202(d), (e), or (f) (Secretly peeping into room occupied by another person, Class I felony);
 - e. G.S. 14-202(g) or (h) (Possession or dissemination of photographs or images that the person knows or should have known were obtained by secret peeping and the images were taken in a public changing facility or changing facility in a place of public accommodations, Class I or H felony, respectively);
 - f. G.S. 14-202.1 (Taking indecent liberties with children, Class F felony);
 - g. G.S. 14-202.4 (Taking indecent liberties with a student, Class I felony) and
2. the felony was committed in a public changing facility or in a changing facility in a place of public accommodations.

PUNISHMENT RANGE

CURRENT: Minimum term based on the class of the current offense and the offender's prior record as provided by G.S. 15A-1340.17.

PROPOSED: One class higher than the underlying felony for which the person was convicted.

ANALYSIS

FINDINGS

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

Offenses are classified based on the harm that results from them. Increasing the class of the offense based on factors that are not elements of the offense is inconsistent with Structured Sentencing. Committing an offense in a public changing facility could be an aggravating factor.

DATE OF REVIEW: 2/24/17

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 186 – Repeal HB2/State Nondiscrimination Policies [filed]

STATUTE

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

DESCRIPTION

Subsection (c):

Any person who

1. while in possession of any device which may be used to create a photographic image,
2. shall secretly peep,
3. into a room that is a public changing facility or changing facility in a place of public accommodations.

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.

Secret peeping into a room occupied by another person is a Class 1 misdemeanor.

Secret peeping while in possession of a device which may be used to create a photographic image into a room that is not a public changing facility 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 H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury as Class H felonies.

DATE OF REVIEW: 2/24/17

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 186 – Repeal HB2/State Nondiscrimination Policies [filed]

STATUTE

§ 14-277.3A. Stalking.

DESCRIPTION

Any person who

1. commits the offense of stalking,
2. while in a public changing facility or changing facility in a place of public accommodations.

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.

A person is guilty of stalking if the person willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the person knows or should know that the harassment or the course of conduct would cause a reasonable person to

- 1) fear for the person's safety or the safety of the person's immediate family or close personal associates
- 2) suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

Stalking is a Class A1 misdemeanor.

Stalking in violation of a court order is a Class H felony, and stalking when the defendant has a previous conviction is a Class F 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: 2/24/17

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 186 – Repeal HB2/State Nondiscrimination Policies [filed]

STATUTE

§ 14-27.33. Sexual Battery.

DESCRIPTION

Subsection (c):

A person who

1. commits the offense of sexual battery
2. while in a public changing facility or in a changing facility in a place of public accommodations.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

1. By force and against the will of the other person; or
2. Who is mentally disabled, incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

Sexual battery 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 H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in personal injury as Class H felonies.

DATE OF REVIEW: 2/24/17

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 28 – Electronic Pawn & Metals Database [Ed. 1]

STATUTE

§ 66-421. Required records and receipts for regulated metals transactions.

DESCRIPTION

Subsection (c):

A person who

1. within 12 hours of a purchase transaction,
2. fails to enter the information recorded for each purchase transaction
3. into the electronic database maintained pursuant to G.S. 147-33.124.

PROPOSED OFFENSE CLASS

Class I felony, second and subsequent offenses (G.S. 66-429).

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.

A first violation of this provision is a Class 1 misdemeanor. G.S. 66-429.

New G.S. 147-33.124, Contract for electronic pawn and metals database, provides that the State shall contract with a third party for the operation of an electronic database that can be used to store and access information reported to it by pawnbrokers, currency converters, precious metals dealers, and secondary metals recyclers, pursuant to various statutory sections outlining the requirements for reporting to the State.

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: 2/24/17

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 109 – Hate Crime Against Emergency Worker [Ed.1]

STATUTE

§ 14-34.11. Felonious hate crime against emergency workers.

DESCRIPTION

Subsection (c):

A person who

1. a. assaults,
b. attempts to assault, or
c. threatens to assault a person
2. because the person is an emergency worker.

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.14-34.11(a)(1) defines emergency worker as a law enforcement officer, a firefighter, an emergency medical technician, or a medical responder.

It is a Class A1 misdemeanor to commit any assault, assault and battery, or affray on an officer or employee of the State or any political subdivision thereof, in the discharge or attempted discharge of official duties. G.S. 14-33(c)(4).

It is a Class I felony to commit an assault on a firefighter, emergency medical technician, medical responder or hospital personnel in the performance of his duties. G.S. 14-34.6(a).

It is a Class I felony to commit an assault on a law enforcement officer in the discharge or attempted discharge of official duties and inflict physical injury. G.S. 14-34.7(c).

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: 2/24/17

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 109 – Hate Crime Against Emergency Worker [Ed.1]
(cont'd)

STATUTE

§ 14-34.11. Felonious hate crime against emergency workers.

DESCRIPTION

Subsection (d):

A person who

1. a. assaults,
b. attempts to assault, or
c. threatens to assault a person
2. because the person is an emergency worker, and
3. inflicts serious bodily injury when so doing.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

G.S.14-34.11(a)(1) defines emergency worker as a law enforcement officer, a firefighter, an emergency medical technician, or a medical responder.

It is a Class F felony to assault another person and inflict serious bodily injury. G.S. 14-32.4(a).

It is a Class H felony to assault a firefighter, emergency medical technician, medical responder, or hospital personnel in the performance of his duties and inflict serious bodily injury. G.S. 14-34.6(b).

It is a Class F felony to assault a law enforcement, probation, or parole officer, member of the North Carolina National Guard, or a person employed at a State or local detention facility and inflict serious bodily injury. G.S. 14-34.7.

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: 2/24/2017

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 109 – Hate Crime Against Emergency Worker [Ed.1]
(cont'd)

STATUTE

§ 14-34.11. Felonious hate crime against emergency workers.

DESCRIPTION

Subsection (e):

A person who

1. a. assaults,
b. attempts to assault, or
c. threatens to assault a person
2. because the person is an emergency worker, and
3. does so with a firearm.

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.

G.S.14-34.11(a)(1) defines emergency worker as a law enforcement officer, a firefighter, an emergency medical technician, or a medical responder.

It is a Class E felony to assault another person with a deadly weapon and inflict serious injury and to assault another person with a deadly weapon with intent to kill. G.S. 14-32.

It is a Class F felony to assault, with a firearm, an officer or employee of the State or any political subdivision of the State, while he is in the performance of his duties. G.S. 14-34.2.

It is a Class E felony to assault, with a firearm, a law enforcement officer, probation officer, or parole officer while he is in the performance of his duties. G.S. 14-34.5(a).

It is a Class F felony to assault, with a firearm, an EMT, a medical responder, or a firefighter, while he is in the performance of his duties. G.S. 14-34.6(c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 2/24/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 109 – Hate Crime Against Emergency Worker [Ed.1]
(cont'd)

STATUTE

§ 14-34.11. Felonious hate crime against emergency workers.

DESCRIPTION

Subsection (f):

A person who

1. commits any offense under this statute
2. by luring the emergency worker to a location by falsely reporting, or having another person falsely report, that emergency services are needed
3. with the intent of harming the emergency worker
4. because he is an emergency worker.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense for which the person was convicted.

PROPOSED: Punished one class higher than the underlying offense.

ANALYSIS

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE OF REVIEW: 2/24/17

IMPACT ANALYSIS NOT REQUESTED YET