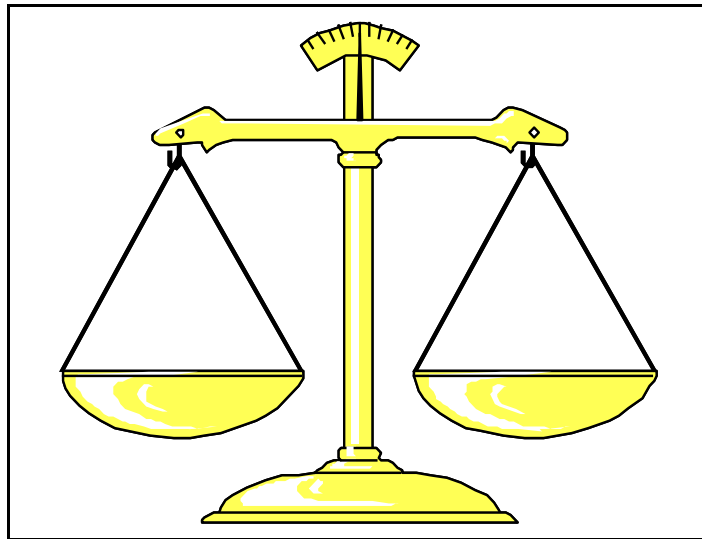


North Carolina
Sentencing and Policy Advisory Commission

Report #1 on Proposed Legislation
Pursuant to N.C.G.S. 164-43



Submitted to the 2018 Session of the
North Carolina General Assembly

June 2018

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Chairman

Michelle Hall
Executive Director

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

This report by the Sentencing Commission includes all bills introduced or amended through June 8, 2018. 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, 2018.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on June 8, 2018.

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	<ul style="list-style-type: none">• Reserved for First Degree Murder <p><i>[Reasonably tends to result or does result in:]</i></p>
B	<ul style="list-style-type: none">• Serious debilitating long-term personal injury
C	<ul style="list-style-type: none">• Serious long-term personal injury• Serious long-term or widespread societal injury
D	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Serious personal injury
F	<ul style="list-style-type: none">• Significant personal injury• Serious societal injury
G	<ul style="list-style-type: none">• Serious property loss Loss from the person or the person's dwelling
H	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Serious property loss: All other felonious property loss• Societal injury
M	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.
B	<ul style="list-style-type: none">• Intentional killing with malice.
D	<ul style="list-style-type: none">• Intentional killing with a partial legal excuse.
E	<ul style="list-style-type: none">• Unintentional killing by criminal or culpable negligence with aggravating circumstances.
F	<ul style="list-style-type: none">• Unintentional killing by criminal or culpable negligence.
H	<ul style="list-style-type: none">• Unintentional killing by motor vehicle involving a serious traffic violation.
	(MISDEMEANOR)
A1	<ul style="list-style-type: none">• Unintentional killing by motor vehicle involving a traffic violation.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
June 8, 2018

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 577	LSC Crim. Check/ Felony Gaming Machines	G.S. 14-297	G	Inconsistent	Would be consistent with Class I felony.	1
HB 969	Enhance Prison Security	G.S. 14-258.4(a)(i)	F	Inconsistent	Would be consistent with Class I felony.	3
		G.S. 14-258.4(a)(ii)	F	Consistent		4
		G.S. 14-258(a)	H	Consistent		5
		G.S. 14-258(b)	F	Consistent		6
		G.S. 14-258(c)	H	Consistent		7
HB 1070	Safer Schools, Healthier Kids Act	G.S. 14-409A	I	Consistent		8
SB 616	Heroin & Opioid Preventing and Enforcement Act	G.S. 90-108(a)(14)	E	Consistent	Would also be consistent with a Class F felony.	9
		G.S. 90-108(a)(15)	G	Consistent		10
		G.S. 90-108(a)(15), cont'd	E	Consistent	Would also be consistent with a Class F felony.	11
		G.S. 90-113.74(k)(1)	I	Consistent		12
		G.S. 90-113.74(k)(2)	I	Consistent		14
		G.S. 90-113.74(k)(3)	H	Consistent		15
SB 704	Universal Voter Registration	G.S. 163A-884	I	Consistent		16
		G.S. 115D-5	I	Consistent		17
		G.S. 116-11	I	Consistent		18

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
June 8, 2018

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
SB 737	Safer Schools, Healthier Kids Act	G.S. 14-409A	I	Consistent		8
SB 794	Hate Crimes Prevention Act	G.S. 14-34.11(b)	F	Consistent		19
		G.S. 14-34.11(d)(1)	E	Inconsistent	Would be consistent with Class B felony.	20
		G.S. 14-34.11(d)(2)	E	Consistent		21
SB 800	Actually Drain the Swamp	G.S. 163A-884	I	Consistent		16
		G.S. 115D-5	I	Consistent		17

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 577 – LSC Crim. Check/Felonious Gaming Machines [Ed. 2]
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STATUTE

§ 14-297. Allowing electronic machines or devices, gaming tables, illegal punchboards or slot machines on premises.

DESCRIPTION

Subsection (b):

A person who

1. knowingly suffers to be opened, kept, or used
2. in or on any part of any premises owned or controlled by the person
3. more than four electronic machines or devices, as defined by G.S. 14-306.4, within 100 feet of any other electronic machines or devices.

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.

G.S. 14-306.4 defines “electronic machine or device” as mechanically, electrically or electronically operated machine or device, that is owned, leased or otherwise possessed by a sweepstakes sponsor or promoter, or any of the sweepstakes sponsor's or promoter's partners, affiliates, subsidiaries or contractors, that is intended to be used by a sweepstakes entrant, that uses energy, and that is capable of displaying information on a screen or other mechanism.

Under G.S. 14-297(a) it is a Class 2 misdemeanor to knowingly suffer to be opened, kept or used in his house or on any part of the premises occupied therewith, any of the gaming tables prohibited by G.S. 14-289 through 14-300 or any illegal punchboard or illegal slot machine.

G.S. 14-306.4(b) makes it unlawful for any person to operate, or place into operation, an electronic machine or device to either conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize, or to promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize. It is a Class 1 misdemeanor for the first offense, a Class H felony for a second offense, and a Class G felony for a third or subsequent offense.

G.S. 14-306.1A makes it unlawful to possess a video gaming machine, as defined in G.S. 14-306(a), which are those machines that require any method of payment to activate the game (e.g., video poker, video bingo, or video lotto). Violations of G.S. 14-306.1A, where there are five or more machines present, is punished as a Class G felony.

Under G.S. 14-306.3(b) it is unlawful to possess a game terminal that simulates a game ordinarily played on a slot machine or a video gaming machine for the purpose of promoting, operating, or conducting a server-based electronic game promotion. Violation is a Class G 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: 06/08/2018

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 969 – Enhance Prison Security [Ed. 2]

STATUTE

§ 14-258.4. Malicious conduct by prisoner.

DESCRIPTION

A person who

1. is a prisoner as defined by statute
2. knowingly and willfully
3. (i) exposes genitalia
4. to an employee,
5. while the employee is in the performance of the employee’s 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.

“Prisoner” is defined as any person in the custody of (i) the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, (ii) any law enforcement officer, or (iii) any local confinement facility as defined in G.S. 153A-217, or G.S. 153A-230.1, including persons pending trial, appellate review, or presentence diagnostic evaluation. (G.S. 14-254.5(2))

Indecent exposure is a Class 2 misdemeanor. (G.S. 14-190.9)

Assault with a firearm on a person employed at a State or local detention facility is a Class E felony (G.S. 14-34.5)

Certain assaults on a person employed at a State or local detention facility; penalty (inflicts serious bodily injury) is a Class F felony (G.S. 14-34.7(a), (a1), and (b))

Certain assaults on a person employed at a State or local detention facility (inflicts physical injury) is a Class I felony (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.

The 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: 06/08/18

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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 969 – Enhance Prison Security [Ed. 2]

STATUTE

§ 14-258.4. Malicious conduct by prisoner.

DESCRIPTION

A person who

1. is a prisoner as defined by statute
2. knowingly and willfully
3. (ii) throws, emits, or causes to be used as a projectile, any bodily fluids, excrement, or unknown substance
4. at an employee
5. while the employee is in the performance of the employee’s 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.

“Prisoner” is defined as any person in the custody of (i) the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, (ii) any law enforcement officer, or (iii) any local confinement facility as defined in G.S. 153A-217, or G.S. 153A-230.1, including persons pending trial, appellate review, or presentence diagnostic evaluation. (G.S. 14-254.5(2))

Indecent exposure is a Class 2 misdemeanor. (G.S. 14-190.9)

Assault with a firearm on a person employed at a State or local detention facility is a Class E felony (G.S. 14-34.5)

Certain assaults on a person employed at a State or local detention facility; penalty (inflicts serious bodily injury) is a Class F felony (G.S. 14-34.7(a), (a1), and (b))

Certain assaults on a person employed at a State or local detention facility (inflicts physical injury) is a Class I felony (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: 06/08/18

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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 969 – Enhance Prison Security [Ed. 2] (cont’d)

STATUTE

§ 14-258. Providing forbidden articles or tools for escape; possessing tools for escape.

DESCRIPTION

Subsection (a) Providing forbidden articles or tools for escape:

A person who

1. sells, trades, conveys, or provides
2. any forbidden articles or tools for escape as defined by statute
3. to a prisoner.

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.

“Forbidden articles or tools for escape” are defined as (1) an article forbidden by prison rules, (2) a letter, oral message, weapon, tool, good, clothing, device, or instrument, to effect an escape or aide in an assault or insurrection. (G.S. 14-258(a))

The provisions of this section apply to violations committed inside or outside of the prison, jail, detention center, or other confinement facility.

This provision replaces the current offense which makes it a Class H felony for any person to convey to or from any convict any letters or oral messages, or convey to any convict or person imprisoned, charged with crime and awaiting trial any weapon or instrument by which to effect an escape, or that will aid him in an assault or insurrection, or trade with a convict for his clothing or stolen goods, or sell to him any article forbidden him by prison rules.

Knowingly giving or selling a mobile telephone to an inmate is a Class H felony. (G.S. 14-258.1(d))

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/08/18

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 969 – Enhance Prison Security [Ed. 2] (cont'd)

STATUTE

§ 14-258. Providing forbidden articles or tools for escape; possessing tools for escape.

DESCRIPTION

Subsection (b) Increased penalty:

A person who

1. sells, trades, conveys, or provides
2. any forbidden articles or tools for escape as defined by statute, and
3. the articles or tools effect an escape, assault, or insurrection
4. to a prisoner.

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.

“Forbidden articles or tools for escape” are defined as (1) an article forbidden by prison rules, (2) a letter, oral message, weapon, tool, good, clothing, device, or instrument, to effect an escape or aide in an assault or insurrection. (G.S. 14-258(a))

The provisions of this section apply to violations committed inside or outside of the prison, jail, detention center, or other confinement facility.

This provision replaces the current offense which provides that when a murder, an assault or an escape is effected with the means furnished, the person convicted of furnishing the means shall be punished as a Class F felon.

Knowingly giving or selling a mobile telephone to an inmate is a Class H felony. (G.S. 14-258.1(d))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/08/18

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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 969 – Enhance Prison Security [Ed. 2] (cont’d)

STATUTE

§ 14-258. Providing forbidden articles or tools for escape; possessing tools for escape.

DESCRIPTION

Subsection (c) Possessing tools for escape:

A person who

1. is a prisoner
2. possesses
3. a letter, weapon, tool, good, article of clothing, device, or instrument to do any of the following:
 - a. Effect an escape.
 - b. Aide [*sic*] in an assault or insurrection.

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.

The provisions of this section apply to violations committed inside or outside of the prison, jail, detention center, or other confinement facility.

Possession of a dangerous weapon in prison is a Class H felony. (G.S. 14-258.2)

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: 06/08/18

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 1070/SB 737 – Safer Schools, Healthier Kids Act. [Ed. 1]

STATUTE

§ 14-409A. Bump stocks and trigger cranks prohibited.

DESCRIPTION

A person, firm, or corporation who

1. manufactures, sells, gives away, transfers, uses, or possesses bump stocks, trigger cranks, or any other similar device or instrument added to a firearm by a person other than the manufacturer that is designed to increase the rate of fire achievable by the firearm.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that result in serious property loss or societal injury as Class I felonies.

Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a weapon of mass death and destruction is a Class F felony (G.S. 14-288.8).

The term “weapon of mass death and destruction” includes [in part]:

1. Any firearm capable of fully automatic fire, any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches, any rifle with barrel or barrels of less than 16 inches in length or an overall length of less than 26 inches, any muffler or silencer for any firearm, whether or not such firearm is included within this definition. For the purposes of this section, rifle is defined as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; or
2. Any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be assembled.

FINDINGS

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

DATE OF REVIEW: 06/08/18

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 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3]
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STATUTE

§ 90-108. Prohibited acts; penalties.

DESCRIPTION

Subdivision (a)(14):

A person who

1. a. is a registrant or practitioner or an employee of a registrant or practitioner and
b. is authorized to possess controlled substances or has access to controlled substances by virtue of employment
2. intentionally diverts any controlled substance which shall have come into his or her possession or under his or her care
3. by means of dilution or substitution or both
4. to his or her own use or other unauthorized or illegal use.

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.

Dilution is defined as the act of diluting or the state of being diluted; the act of reducing the concentration of a mixture or solution. (G.S. 90-108(b)(3)a.)

Substitution is defined as to take the place of or replace. (G.S. 90-108(b)(3)b.)

Currently, a person who commits this offense by embezzling, misapplying, or diverting the controlled substance is guilty of a Class G felony. (G.S. 90-108(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.

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

DATE OF REVIEW: 06/08/18

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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 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3] (cont'd)
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STATUTE

§ 90-108. Prohibited acts; penalties.

DESCRIPTION

Subdivision (a)(15):

A person who

1. a. is not a registrant or practitioner nor an employee of a registrant or practitioner and
b. by virtue of his or her occupation or profession, administers or provides medical care, aid, emergency treatment, or any combination of these
2. to a person who is prescribed a controlled substance,
3. embezzles or fraudulently or knowingly and willfully misapplies or diverts to his or her own use or other unauthorized or illegal use or takes, makes away with, or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use
4. any controlled substance that is prescribed to another.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/08/18

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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 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3] (cont'd)
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STATUTE

§ 90-108. Prohibited acts; penalties.

DESCRIPTION

Subdivision (a)(15):

A person who

1. a. is not a registrant or practitioner nor an employee of a registrant or practitioner and
b. by virtue of his or her occupation or profession, administers or provides medical care, aid, emergency treatment, or any combination of these
2. to a person who is prescribed a controlled substance,
3. intentionally diverts any controlled substance that is prescribed to another
4. by means of dilution or substitution or both
5. to his or her own use or other unauthorized or illegal use.

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.

Dilution is defined as the act of diluting or the state of being diluted; the act of reducing the concentration of a mixture or solution. (G.S. 90-108(b)(3)a.)

Substitution is defined as to take the place of or replace. (G.S. 90-108(b)(3)b.)

A person who commits this offense by embezzling, misapplying, or diverting the controlled substance is guilty of a Class G felony. (G.S. 90-108(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.

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

DATE OF REVIEW: 06/08/18

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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 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3] (cont'd)
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STATUTE

§ 90-113.74. Confidentiality.

DESCRIPTION

Subdivision (k)(1):

A person who

1. is authorized to access data in the controlled substances reporting system pursuant to G.S. 90-113.74(c)(3) through (10)
2. knowingly and intentionally accesses prescription information in the controlled substances reporting system
3. for a purpose not authorized by G.S. 90-113.74.

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.

(3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication. The Attorney General of North Carolina, or a designee who is a full-time employee in the North Carolina Department of Justice, shall have access to the system to monitor requests for inspection of records.

(4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.

(5) To a sheriff or designated deputy sheriff or a police chief or a designated police investigator who is assigned to investigate the diversion and illegal use of prescription medication or pharmaceutical products identified in Article 5 of this Chapter of the General Statutes as Schedule II through V controlled substances and who is engaged in a bona fide specific investigation related to the enforcement of laws governing licit drugs pursuant to a lawful court order specifically issued for that purpose.

(6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.

(7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

(9) The federal Drug Enforcement Administration's Office of Diversion Control or Tactical Diversion Squad in North Carolina.

(10) The North Carolina Health Information Exchange Authority (NC HIE Authority), established under Article 29B of this Chapter, through Web-service calls.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/08/18

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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 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3] (cont'd)
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STATUTE

§ 90-113.74. Confidentiality.

DESCRIPTION

Subdivision (k)(2):

A person who

1. is authorized to access data in the controlled substances reporting system pursuant to G.S. 90-113.74(c)(3) through (10)
2. knowingly and intentionally discloses or disseminates prescription information from the system
3. for a purpose not authorized by G.S. 90-113.74.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/08/18

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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 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3] (cont'd)
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STATUTE

§ 90-113.74. Confidentiality.

DESCRIPTION

Subdivision (k)(3):

A person who

1. is authorized to access data in the controlled substances reporting system pursuant to G.S. 90-113.74(c)(3) through (10)
2. willfully and maliciously obtains, discloses, or disseminates prescription information
3. for a purpose not authorized by G.S. 90-113.74 and
4. with the intent to use such information for commercial advantage or personal gain, or to maliciously harm any 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.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/08/18

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 704 – Universal Voter Registration [Ed. 1]; SB 800 – Actually Drain the Swamp [Ed. 1]
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STATUTE

§ 163A-884. Voter registration at other public agencies; automatic voter registration.

DESCRIPTION

A person who

1. willfully and
2. knowingly and
3. with fraudulent intent
4. gives false information on the application for automatic voter registration.

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. 163A-884 imposes automatic voter registration duties on public agencies responsible for voter registration.

Under G.S. 163A-883, for voter registration in driver’s license offices, any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of 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: 06/08/2018

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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 704 – Universal Voter Registration [Ed. 1]; SB 800 – Actually Drain the Swamp [Ed. 1] (cont’d)
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STATUTE

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from North Carolina Human Resources Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities; automatic voter registration.

DESCRIPTION

A person who

1. willfully and
2. knowingly and
3. with fraudulent intent
4. gives false information on the application for automatic voter registration.

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. 115D-5 imposes automatic voter registration duties on the State Board of Community Colleges.

Under G.S. 163A-883, for voter registration in driver’s license offices, any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of 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: 06/08/2018

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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 704 – Universal Voter Registration [Ed. 1]; SB 800 – Actually Drain the Swamp [Ed. 1] (cont’d)
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STATUTE

§ 116-11. Powers and duties generally.

DESCRIPTION

A person who

1. willfully and
2. knowingly and
3. with fraudulent intent
4. gives false information on the application for automatic voter registration.

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. 116-11 imposes automatic voter registration duties on the Board of Governors of the University of North Carolina system.

Under G.S. 163A-883, for voter registration in driver’s license offices, any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of 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: 06/08/2018

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

BILL NUMBER/SHORT TITLE: SB 794 – Hate Crimes Prevention Act [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (b):

A person who

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

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes 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.

It is currently 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.

The Sentencing Commission reviewed a substantially similar provision in March 2017 in HB 152 and found it to be consistent with the Offense Classification Criteria for a Class F felony.

FINDINGS

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

DATE OF REVIEW: 06/08/18

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: SB 794 – Hate Crimes Prevention Act [Ed. 1] (cont’d)

STATUTE

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

DESCRIPTION

Subsection (d)(1):

A person who

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

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

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

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

The Sentencing Commission reviewed a substantially similar provision in March 2017 in HB 152 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class E felony. The Commission noted that the provision might be consistent with the Homicide Offense Classification for a Class B 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 B felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious debilitating long-term personal injury as Class B felonies.

DATE OF REVIEW: 06/08/2018

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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 794 – Hate Crimes Prevention Act [Ed. 1] (cont'd)
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STATUTE

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

DESCRIPTION

Subsection (d)(2):

A person who

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

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission classified offenses which result in serious personal injury as Class E felonies.

Assault inflicting serious bodily injury is a Class F felony (G.S. 14-32.4). Serious bodily injury is defined by statute as bodily injury that creates a substantial risk of death, or that causes 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.

It is currently 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.

The Sentencing Commission reviewed a substantially similar provision in March 2017 in HB 152 and found it to be consistent with the Offense Classification Criteria for a Class E 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: 06/08/2018

IMPACT ANALYSIS NOT REQUESTED YET