

# REVIEW OF PROPOSED LEGISLATION PURSUANT TO N.C.G.S. 164-43

## REPORT #1



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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"><li>• Reserved for First Degree Murder</li></ul> <p><i>[Reasonably tends to result or does result in:]</i></p>
B	<ul style="list-style-type: none"><li>• Serious debilitating long-term personal injury</li></ul>
C	<ul style="list-style-type: none"><li>• Serious long-term personal injury</li><li>• Serious long-term or widespread societal injury</li></ul>
D	<ul style="list-style-type: none"><li>• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling</li></ul>
E	<ul style="list-style-type: none"><li>• Serious personal injury</li></ul>
F	<ul style="list-style-type: none"><li>• Significant personal injury</li><li>• Serious societal injury</li></ul>
G	<ul style="list-style-type: none"><li>• Serious property loss Loss from the person or the person's dwelling</li></ul>
H	<ul style="list-style-type: none"><li>• 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</li><li>• Personal injury</li><li>• Significant societal injury</li></ul>
I	<ul style="list-style-type: none"><li>• Serious property loss: All other felonious property loss</li><li>• Societal injury</li></ul>
M	<ul style="list-style-type: none"><li>• All other misdemeanors</li></ul>

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\* Personal injury includes both physical and mental injury.

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

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

## HOMICIDE OFFENSE CLASSIFICATION CRITERIA

<b>CLASS</b>	<b>CRITERIA</b>
	<b>(FELONY)</b>
<b>A</b>	<ul style="list-style-type: none"><li>• Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.</li></ul>
<b>B</b>	<ul style="list-style-type: none"><li>• Intentional killing with malice.</li></ul>
<b>D</b>	<ul style="list-style-type: none"><li>• Intentional killing with a partial legal excuse.</li></ul>
<b>E</b>	<ul style="list-style-type: none"><li>• Unintentional killing by criminal or culpable negligence with aggravating circumstances.</li></ul>
<b>F</b>	<ul style="list-style-type: none"><li>• Unintentional killing by criminal or culpable negligence.</li></ul>
<b>H</b>	<ul style="list-style-type: none"><li>• Unintentional killing by motor vehicle involving a serious traffic violation.</li></ul>
	<b>(MISDEMEANOR)</b>
<b>A1</b>	<ul style="list-style-type: none"><li>• Unintentional killing by motor vehicle involving a traffic violation.</li></ul>

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

<b>Bill</b>	<b>Short Title</b>	<b>Provision</b>	<b>Proposal</b>	<b>Finding</b>	<b>Commentary</b>	<b>Page</b>
HB 577	LSC Crim. Check/ Felony Gaming Machines	G.S. 14-297	G	Inconsistent	Would be consistent with Class I felony.	<a href="#">1</a>
HB 969	Enhance Prison Security	G.S. 14-258.4(a)(i)	F	Inconsistent	Would be consistent with Class I felony.	<a href="#">4</a>
		G.S. 14-258.4(a)(ii)	F	Consistent		<a href="#">5</a>
		G.S. 14-258(a)	H	Consistent		<a href="#">6</a>
		G.S. 14-258(b)	F	Consistent		<a href="#">7</a>
		G.S. 14-258(c)	H	Consistent		<a href="#">8</a>
HB 1070	Safer Schools, Healthier Kids Act	G.S. 14-409A	I	Consistent		<a href="#">14</a>
SB 616	Heroin & Opioid Prevention and Enforcement Act	G.S. 90-108(a)(14)	E	Consistent	Would also be consistent with a Class F felony.	<a href="#">15</a>
		G.S. 90-108(a)(15)	G	Consistent		<a href="#">16</a>
		G.S. 90-108(a)(15), cont'd	E	Consistent	Would also be consistent with a Class F felony.	<a href="#">17</a>
		G.S. 90-113.74(k)(1)	I	Consistent		<a href="#">18</a>
		G.S. 90-113.74(k)(2)	I	Consistent		<a href="#">19</a>
		G.S. 90-113.74(k)(3)	H	Consistent		<a href="#">20</a>
SB 704	Universal Voter Registration	G.S. 163A-884	I	Consistent		<a href="#">34</a>
		G.S. 115D-5	I	Consistent		<a href="#">35</a>
		G.S. 116-11	I	Consistent		<a href="#">36</a>

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

<b>Bill</b>	<b>Short Title</b>	<b>Provision</b>	<b>Proposal</b>	<b>Finding</b>	<b>Commentary</b>	<b>Page</b>
SB 737	Safer Schools, Healthier Kids Act	G.S. 14-409A	I	Consistent		<a href="#">14</a>
SB 794	Hate Crimes Prevention Act	G.S. 14-34.11(b)	F	Consistent		<a href="#">37</a>
		G.S. 14-34.11(d)(1)	E	Inconsistent	Would be consistent with Class B felony.	<a href="#">38</a>
		G.S. 14-34.11(d)(2)	E	Consistent		<a href="#">39</a>
SB 800	Actually Drain the Swamp	G.S. 163A-884	I	Consistent		<a href="#">34</a>
		G.S. 115D-5	I	Consistent		<a href="#">35</a>
		G.S. 116-11	I	Consistent		<a href="#">36</a>

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b> 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). Violation of G.S. 14-306.1A, where there are five or more machines present, is punished as a Class G felony.

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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**

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 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 ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 471: FELONIOUS GAMING MACHINES [Ed. 2]<sup>1</sup>**

**PREPARED: JUNE 26, 2018**

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURE SENTENCING <sup>2</sup>**

This bill amends G.S. 14-197, Allowing electronic machines or devices, gaming tables, illegal punchboards or slot machines on premises, by adding subsection (b). Subsection (b) makes it a Class G felony for a person to knowingly suffer to be opened, kept, or used in or on any part of any premises owned or controlled by the person, two or more electronic machines or devices, as defined by G.S. 14-306.4.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2017, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
3	1	2	2	2	2
20	8	15	15	15	15

Effective December 1, 2018, and applies to offenses committed or after that date.

Currently, 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. In FY 2017 there were 2 Class 1 misdemeanor convictions and no Class H felony or Class G felony convictions under G.S. 14-306.4(b). DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2017 Structured Sentencing Simulation Data.

<sup>1</sup> The Sentencing Commission provided impact analysis for HB 471, HB 577 was introduced later. The provisions of HB 471 and HB 577 relating to the creation of a new Class G felony for electronic gambling machines are substantively the same; therefore, the impact analysis for HB 471 is provided here.

<sup>2</sup> A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

**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

**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]

**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 (assault inflicting serious bodily injury) is a Class F felony (G.S. 14-34.7(a))

Certain assaults on a person employed at a State or local detention facility (assault inflicting 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

**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 (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. to a prisoner
3. any forbidden articles or tools for escape as defined by statute, and
4. the articles or tools effect an escape, assault, or insurrection.

**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 ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**HB 969: ENHANCE PRISON SECURITY [Ed. 2]**

**PREPARED: JUNE 7, 2018**

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURE SENTENCING <sup>1</sup>**

This bill makes several changes to Article 33 of Chapter 14, Prison Breach and Prisoners. It expands the scope of an existing Class H felony and adds a consecutive sentencing requirement. It also rewrites and expands the scope of two existing Class H and Class F felonies, and creates a new Class H felony.

**SECTION 2.** This section amends G.S. 14-258.4, Malicious Conduct by Prisoner. It adds two additional elements to the offense.

G.S. 14-258.4(a) currently provides that any [prisoner] who knowingly and willfully throws, emits, or causes to be used as a projectile, bodily fluids or excrement at an [employee] while the employee is in the performance of his or her duties is guilty of a Class F felony.

New G.S. 14-258.4 would broaden the scope of conduct that constitutes the offense of Malicious Conduct by Prisoner by adding two additional elements as well as by expanding the existing language. New G.S. 14-258.4 provides that any prisoner who knowingly and willfully (i) exposes genitalia to an employee; (ii) masturbates in front of an employee; or (iii) throws, emits, or causes to be used as a projectile, any bodily fluids, excrement, or unknown substance at an employee while the employee is in the performance of the employee's duties, is guilty of a Class F felony.

Impact: There were 100 convictions for violations of G.S. 14-258.4, Malicious Conduct by Prisoner in FY 2017. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2017, 52% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	2	2	2	2
20	10	19	20	20	21

<sup>1</sup> A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

New G.S. 14-258.4 also provides that sentences imposed under this section shall run consecutively to and shall commence at the expiration of any sentence being served by the person sentenced under this section.

Impact: The Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. The length of the sentence imposed and whether it was active or suspended would have impact on the additional beds needed. Depending upon the prior record level of the inmate, it is possible that the new sentence could be suspended and an intermediate punishment imposed. In FY 2017, 46% of Class F convictions for violations of G.S. 14-258.4, Malicious Conduct by Prisoner resulted in active sentences with an average time served of 22 months. In addition, bed impact would occur where prison inmates serving concurrent sentences would serve consecutive sentences under the proposed section. In FY 2017, 22% of the offenders who received an active sentence for violations of G.S. 14-258.4 also received a consecutive sentence, while 20% of the offenders who received a non-active sentence for violations of G.S. 14-258.4 also received a consecutive sentence.

**SECTION 2 [sic].** This section amends G.S. 14-258 by deleting all existing language and replacing it with a similar, but expanded, offense. G.S. 14-258, Conveying messages and weapons to or trading with convicts and other prisoners, is deleted in its entirety and is replaced with new G.S. 14-258, Providing forbidden articles or tools for escape; possessing tools for escape.

G.S. 14-258 currently provides that if any person shall convey to or from any convict any letters or oral messages, or shall 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 shall trade with a convict for his clothing or stolen goods, or shall sell to him any article forbidden him by prison rules, he shall be guilty of a Class H felony: provided, 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. G.S. 14-258 currently applies only to persons aiding a prisoner in a potential prison escape.

New G.S. 14-258(a), Providing forbidden articles or tools for escape, would expand the scope of conduct prohibited by the existing Class H felony. It provides that any person who sells, trades, conveys, or provides any of the following to a prisoner is guilty of a Class H felony: (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 [sic] in an assault or insurrection.

Impact: The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-258, Conveying messages and weapons to or trading with convicts and other prisoners. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is also not known how many additional convictions may result from the proposed broadening of the new G.S. 14-258 statute.

In FY 2017, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison

following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

This conduct may be covered in part by G.S. 14-258.1(d), which provides that any person who knowingly gives or sells a mobile telephone or other wireless communications device, or a component of one of those devices, to an inmate [or to a delinquent juvenile] in the custody of [DACJJ], or to an inmate in the custody of a local confinement facility, or any person who knowingly gives or sells any such device or component to a person who is not an inmate or delinquent juvenile for delivery to an inmate or delinquent juvenile, is guilty of a Class H felony. In FY 2017, there were 4 Class H convictions for violations of G.S. 14-258.1(d).

New G.S. 14-258(b), Increased penalty, would expand the scope of conduct prohibited by the existing Class F felony. It provides that any violation of subsection (a)(2) of this section that does effect an escape, assault, or insurrection is a Class F felony.

Impact: The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-258, Conveying messages and weapons to or trading with convicts and other prisoners. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is also not known how many additional convictions may result from the proposed broadening of the new G.S. 14-258 statute.

In FY 2017, 52% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	2	2	2	2
20	10	19	20	20	21

New G.S 14-258(c), Possessing tools for escape would create a new Class H felony offense. It provides that any prisoner who possesses a letter, weapon, tool, good, article of clothing, device, or instrument

to do any of the following is guilty of a Class H felony: (1) to effect an escape; (2) aide [sic] in an assault or insurrection.

Impact: Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2017, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

This conduct may be covered in part by G.S. 14-258.2(a), Possession of a dangerous weapon in prison, which provides that any person while in the custody of [DACJJ], or any person under the custody of any local confinement facility, who shall have in his possession without permission or authorization a weapon capable of inflicting serious bodily injuries or death, or who shall fabricate or create such a weapon from any source, shall be guilty of a Class H felony, or by G.S. 14-258.1(g), which provides that any inmate in the custody of [DAC] or an inmate of a local confinement facility who possesses a mobile telephone or other wireless communication device or a component of one of those devices is guilty of a Class H felony. In FY 2017, there were 33 Class H convictions for violations of G.S. 14-258.2(a) and 1 Class H conviction for violations of G.S. 14-258.1(g).

### **Impact on the Youth Development (YDC) Population**

Because the definition of “prisoner” in new G.S. 14-258 would include any person in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, juveniles are included in the pool of potential offenders of the expanded Class H and F felonies and the new Class H felony (all Serious offenses based upon the Juvenile Offense Classification, G.S. 7B-2508(a)(2)).

Impact: The impact on the YDC population would depend on the number of Level 3 dispositions involved. The following estimate would apply to *each* offense listed above *separately*, but, for brevity, is noted once. It is also not known how many additional dispositions would result from the proposed broadening of the statute. In FY 2017, the court ordered Level 3 dispositions for 3% of Serious offenses (31 out of 1,037) with an average length of stay in a YDC of 14 months.

In FY 2017, there were 6 juvenile dispositions for violations of G.S. 14-258.4, Malicious Conduct by Prisoner; all juveniles received a Level 2 (Intermediate) disposition. There were no dispositions for violations of G.S. 14-258.1 or G.S. 14-258.2. Therefore, given the dispositions estimate above and no

Level 3 dispositions ordered for violations of Malicious Conduct by Prisoner in FY 2017, little impact is expected on the YDC population due to the proposed changes.

This act becomes effective December 1, 2018, and applies to offenses committed on or after that date.

DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2017 Structured Sentencing Simulation Data and FY 2017 Disposition Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 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)**

<b>BILL NUMBER/SHORT TITLE:</b> 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)**

<b>BILL NUMBER/SHORT TITLE:</b>	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)**

<b>BILL NUMBER/SHORT TITLE:</b> 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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 616 – Heroin & Opioid Prevention & Enforcement Act [Ed. 3] (cont'd)
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**STATUTE**

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§ 90-113.74. Confidentiality.

**DESCRIPTION**

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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**

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Class I felony.

**ANALYSIS**

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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. 90-113.74(c)(3) through (10) provides:

(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.

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(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**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/08/18

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	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)**

<b>BILL NUMBER/SHORT TITLE:</b>	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 ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

**SB 616: HEROIN & OPIOID PREVENTION & ENFORCEMENT ACT**

**PREPARED: JUNE 6, 2018**

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURE SENTENCING <sup>1</sup>**

**SECTION 4.** This section amends G.S. 90-90, Schedule II controlled substances, by expanding subsection (2), opiates or opioids, to include “Fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidinone (NPP).” Adding a substance could result in additional convictions for the Schedule II controlled substance offenses.

**Class 1 Misdemeanors**

Under G.S. 90-95(d)(2), it is a Class 1 misdemeanor to possess a Schedule II controlled substance as proscribed by G.S. 90-95(a)(3).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit the offense set forth above is guilty of a Class 1 misdemeanor.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2017, 33% of Class 1 misdemeanor convictions resulted in active sentences, with an average sentence length of 40 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, additional convictions that result from the proposed broadening of the current statute would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

**Class I Felonies**

Under G.S. 90-95(d)(2), it is a Class I felony to possess a Schedule II controlled substance as proscribed by G.S. 90-95(a)(3) if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity.

Under G.S. 90-95(c), it is a Class I felony to create, sell or deliver, or possess with intent to sell or deliver a counterfeit Schedule II controlled substance as proscribed by G.S. 90-95(a)(2).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit the offense set forth above is guilty of a Class I felony.

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<sup>1</sup> A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2017, 13% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 11 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
11	1	2	2	2	2
20	2	5	5	5	5

### **Class H Felonies**

Under G.S. 90-95(b)(1), it is a Class H felony to manufacture or deliver, or possess with intent to manufacture, sell or deliver, a Schedule II controlled substance as proscribed by G.S. 90-95(a)(1).

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class H felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2017, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

### **Class G Felonies**

Under G.S. 90-95(b)(1), it is a Class G felony to sell a Schedule II controlled substance as proscribed by G.S. 90-95(a)(1).

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class G felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of

age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule II controlled substance.

Under G.S. 90-95.7, Participating in a drug violation by a minor, it is a Class G felony for a person 21 years of age or older to purchase or receive a controlled substance from a minor 13 years of age or younger.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class G felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2017, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
3	1	2	2	2	2
20	8	15	15	15	15

### **Class F Felonies**

Under subpart (a)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor more than 13 years of age to sell a Schedule II controlled substance.

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class F felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule II controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class F felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2017, 52% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation

and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	2	2	2	2
20	10	19	20	20	21

### **Class E Felonies**

Under subpart (a)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 18 to 20 years of age to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule II controlled substance.

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class E felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule II controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class E felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. In FY 2017, 58% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	26	32	33	33

### **Class D Felonies**

Under subpart (b)(1) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor more than 13 years of age to sell a Schedule II controlled substance.

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class D felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or

younger to manufacture, deliver, or possess with intent to manufacture, sell, or deliver a Schedule II controlled substance.

Under G.S. 90-95.6, Promoting drug sales by a minor, it is a Class D felony for a person who is 21 years of age or older to either entice, force, encourage, or otherwise facilitate a minor or supervise, support, advise, or protect a minor to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a Schedule II controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class D felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, all Class D offenders are required to receive an active sentence.<sup>2</sup> In FY 2017, the average estimated time served for an offender convicted of a Class D offense was 64 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there was 1 additional conviction (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
1	1	2	3	4	5
20	20	41	61	82	102

### **Class C Felonies**

Under subpart (b)(2) of G.S. 90-95.4, Employing or intentionally using minor to commit a drug law violation, it is a Class C felony for a person 21 years of age or older to hire or intentionally employ a minor 13 years of age or younger to sell a Schedule II controlled substance.

Under G.S. 90-98, Attempt and conspiracy; penalties, a person who engages in an attempt or a conspiracy to commit any of the offenses set forth above is guilty of a Class C felony.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Under Structured Sentencing, all Class C offenders are required to receive an active sentence.<sup>3</sup> In FY 2017, the average estimated time served for an offender convicted of a Class C offense was 82 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there was 1

<sup>2</sup> If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

<sup>3</sup> If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

additional conviction (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
1	1	2	3	4	5
20	20	41	61	82	102

Effective July 1, 2018.

**SECTION 5.** This section amends G.S. 90-95(d2), immediate precursor chemicals, by adding “N-phenethyl-4-piperidinone (NPP).” Adding a chemical could result in additional convictions for the precursor chemical offenses.

Under G.S. 90-95(d1)(1), it is a Class H felony to (a) possess an immediate precursor chemical with intent to manufacture a controlled substance; or (b) possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Impact: It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2017, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Effective July 1, 2018.

**SECTION 7.** This section amends three subdivisions of G.S. 90-95(h). This section amends G.S. 90-95(h)(3d), trafficking in MDPV, by expanding it to include all substituted cathinones (MDPV is a member of the cathinone class).

Under G.S. 90-95(h)(3d)a. it is a Class F felony to traffic in substituted cathinones of 28 grams or more but less than 200 grams. The person must be sentenced to a minimum term of 70 months and a maximum term of 93 months and the sentence must be active.

Under G.S. 90-95(h)(3d)b. it is a Class E felony to traffic in substituted cathinones of 200 grams or more but less than 400 grams. The person must be sentenced to a minimum term of 90 months and a maximum term of 120 months and the sentence must be active.

Under G.S. 90-95(h)(3d)c. it is a Class C felony to traffic in substituted cathinones of 400 grams or more. The person must be sentenced to a minimum term of 225 months and a maximum term of 282 months and the sentence must be active.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Drug Trafficking offenses are subject to mandatory active sentences based on offense class, unless a finding of substantial assistance is made according to G.S. 90-95(h). In FY 2017, there was 1 conviction for violations of G.S. 90-95(h)(3d), trafficking in MDPV. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation for Class C and E convictions, while nine months of post-release supervision is required for Class F convictions. The following table shows the estimated annual impact if, for example, there was 1 additional conviction (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
1	1	2	3	4	5
20	20	41	61	82	102

This section also amends G.S. 90-95(h) by repealing subdivision (3e), trafficking in mephedrone. Mephedrone is a member of the cathinone class and violations of these offenses would be subsumed under the amended G.S. 90-95(h)(3d).

- a. Trafficking in mephedrone, 28 grams or more but less than 200 grams, is a Class F felony.
- b. Trafficking in mephedrone, 200 grams or more but less than 400 grams, is a Class E felony.
- c. Trafficking in mephedrone, 400 grams or more, is a Class C felony.

Impact: In FY 2017, there were no convictions for violations of G.S. 90-95(h)(3e). Therefore, the repeal of G.S. 90-95(h)(3e) is not expected to have a significant impact on the prison population.

This section also amends G.S. 90-95(h)(4), trafficking in opium or heroin, by expanding it to include opioids.

Under G.S. 90-95(h)(4)a. it is a Class F felony to traffic in opium, opiate, opioid, or heroin of 4 grams or more but less than 14 grams. The person must be sentenced to a minimum term of 70 months and a maximum term of 93 months and the sentence must be active.

Under G.S. 90-95(h)(4)b. it is a Class E felony to traffic in opium, opiate, opioid, or heroin of 14 grams or more but less than 28 grams. The person must be sentenced to a minimum term of 90 months and a maximum term of 120 months and the sentence must be active.

Under G.S. 90-95(h)(4)c. it is a Class C felony to traffic in opium, opiate, opioid, or heroin of 28 grams or more. The person must be sentenced to a minimum term of 225 months and a maximum term of 282 months and the sentence must be active.

Impact: It is not known how many additional convictions would occur for *each* of the offenses listed above as a result of the proposed broadening of the current statute. The impact would depend on the number of convictions involved. The following estimate would apply to *each* offense *separately*, but, for brevity, is noted once. Drug Trafficking offenses are subject to mandatory active sentences based on offense class, unless a finding of substantial assistance is made according to G.S. 90-95(h). In FY 2017, there were 148 convictions for violations of G.S. 90-95(h)(4). Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation for Class C and E convictions, while nine months of post-release supervision is required for Class F convictions. The following table shows the estimated annual impact if, for example, there was 1 additional conviction (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
1	1	2	3	4	5
20	20	41	61	82	102

Effective July 1, 2018.

**SECTION 9.** This section amends G.S. 90-108, Prohibited acts; penalties.

This section expands subdivision (a)(14) of G.S. 90-108 by adding a person who is a registrant or practitioner to the list of people covered by the existing offense. Under subdivision (b)(2), violation of subdivision (a)(14) is a Class G felony.

Impact: There were 6 convictions for the Class G felony in G.S. 90-108(a)(14) in FY 2017. It is not known how many additional convictions may result from adding a person who is a registrant or practitioner to the list of people covered by the existing offense of the current statute. In FY 2017, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
3	1	2	2	2	2
20	8	15	15	15	15

This section also adds subdivision (b)(3) which makes violation of subdivision (a)(14) a Class E felony if the person intentionally diverts any controlled substance by means of dilution or substitution or both.

Impact: Since the proposed subdivision (b)(3) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2017, 58% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	26	32	33	33

The conduct of the proposed Class E offense would be covered by persons listed in subdivision (a)(14). By expanding the potential pool, it is not known how many additional convictions may result from adding a person who is a registrant or practitioner to the list of people covered by the existing offense of the current statute.

This section adds subdivision (a)(15) which makes it unlawful for any person who is not one of the people currently listed and who, by virtue of his or her occupation or profession, administers or provides medical care, aid, emergency treatment, or any combination of these to a person who is prescribed a controlled substance, to embezzle or fraudulently or knowingly and willfully misapply or divert to his or her own use or other unauthorized or illegal use or to take, make a way with, or secrete, 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 any controlled substance that is prescribed to another. Under subdivision (b)(2), violation of subdivision (a)(15) is a Class G felony.

Impact: Since the proposed subdivision (a)(15) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2017, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
3	1	2	2	2	2
20	8	15	15	15	15

This section also adds subdivision (b)(3) which makes violation of subdivision (a)(15) a Class E felony if the person intentionally diverts any controlled substance by means of dilution or substitution or both.

Impact: Since the proposed subdivision (b)(3) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2017, 58% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	26	32	33	33

Effective July 1, 2018.

**SECTION 11(a).** This section amends G.S. 90-113.74 by adding subsection (k). Subsection (k) enacts three new felony offenses that apply to individuals who are authorized to access data in the controlled substances reporting system.

Subdivision (1) of G.S. 90-113.74(k) makes it a Class I felony if that person knowingly and intentionally accesses prescription information in the system for a purpose not authorized by G.S. 90-113.74.

Subdivision (2) of G.S. 90-113.74(k) makes it a Class I felony if that person knowingly and intentionally discloses or disseminates prescription information from the system for purpose not authorized by G.S. 90-113.74.

Impact: Since the proposed subsection (k) creates 2 new Class I offenses, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. The following estimate would apply to *each* offense in Subdivision (1) and Subdivision (2) *separately*. It is not known how many offenders might be convicted and sentenced for each new offense. In FY 2017, 13% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 11 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
11	1	2	2	2	2
20	2	5	5	5	5

Subdivision (3) of G.S. 90-113.74(k) makes it a Class H felony if that person willfully and maliciously obtains, discloses, or disseminates prescription information for purpose not authorized by G.S. 90-113.74 and with the intent to use such information for commercial advantage or personal gain, or to maliciously harm any person.

Impact: Since the proposed Subdivision (3) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2017, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Effective July 1, 2018.

**Impact on the Youth Development (YDC) Population**

Section 4 could result in additional dispositions (Juvenile Offense Classification: Minor and Serious) for juveniles for the Schedule II controlled substance offenses that do not have a minimum age of 18. (See Section 4 for analysis.)

Section 5 could result in additional dispositions (Juvenile Offense Classification: Serious) for juveniles for the precursor chemical offenses. (See Section 5 for analysis.)

Section 7 could result in additional dispositions for juveniles for the drug trafficking offenses (Juvenile Offense Classification: Violent and Serious). (See Section 7 for analysis.)

The impact on the YDC population would depend on the number of Level 3 dispositions involved. The following estimate would apply to *each* offense listed in the Sections above *separately*, but, for brevity, is noted once. It is not known how many additional dispositions would result from the proposed changes. In FY 2017, the court ordered Level 3 dispositions for 29% of Violent offenses (36 out of 123) with an average length of stay in a YDC of 16 months; 3% of Serious offenses (31 out of 1,037) with an average length of stay in a YDC of 14 months; and 0% of Minor offenses (13 out of 2,724) with an average length of stay in a YDC of 8 months.

Section 9 should not result in additional dispositions since juveniles are not eligible to become registrants, practitioners, and professional medical care or emergency treatment providers.

Section 11 should not result in additional dispositions since juveniles do not have access to the controlled substances reporting system.

In FY 2017, 229 or 6% of all dispositions (n=3,884) were for G.S. 90-95, drug offenses. Table 1 provides descriptive statistics for the drug offenses. One juvenile (< 1%) received a Level 3 disposition. Given the dispositions estimate above and the few Level 3 dispositions ordered for drug offenses, little impact is expected on the YDC population due to the proposed changes.

**Table 1: FY 2017 Juvenile Dispositions for G.S. 90-95, Drug Offenses**

<b>Offense Classification</b>	<b>Disposition Level</b>			<b>Totals</b>
	<b>Level 1 Community</b>	<b>Level 2 Intermediate</b>	<b>Level 3 YDC Commitment</b>	
<b>Violent</b>	0	2	0	2
<b>Serious</b>	12	21	0	33
<b>Minor</b>	161	32	1	194
<b>Totals</b>	173	55	1	229

Note: There were 3 Level 2 dispositions for G.S. 90-95(h)(4)a and b, drug trafficking – 2 Violent offenses and 1 Serious offense.

DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2017 Disposition Simulation Data

DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2017 Structured Sentencing Simulation Data and FY 2017 Disposition Simulation Data

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b>	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

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	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

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	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**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

<b>BILL NUMBER/SHORT TITLE:</b> SB 794 – Hate Crimes Prevention Act [Ed. 1]
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**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)**

<b>BILL NUMBER/SHORT TITLE:</b> 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)(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 Homicide Offense Classification Criteria.

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

Homicide Offense Classification Criteria are not applicable.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class B felony. The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

**DATE OF REVIEW:** 06/08/2018

**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)**

<b>BILL NUMBER/SHORT TITLE:</b> SB 794 – Hate Crimes Prevention Act [Ed. 1] (cont’d)
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**STATUTE**

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

**DESCRIPTION**

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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**

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Class E felony.

**ANALYSIS**

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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

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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/08/2018

**IMPACT ANALYSIS NOT REQUESTED YET**