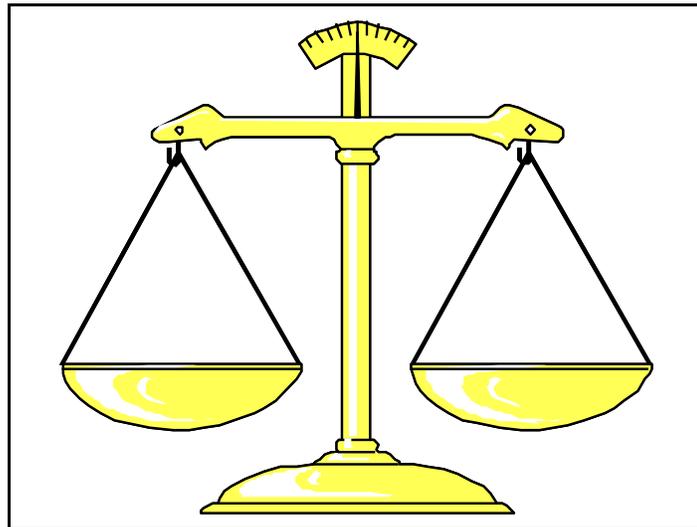


North Carolina
Sentencing and Policy Advisory Commission

Report #2 on Proposed Legislation
Pursuant to N.C.G.S. 164-43



Submitted to the 2017 Session of the
North Carolina General Assembly

April 2017

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Chairman

Michelle Hall
Executive Director

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

This report by the Sentencing Commission includes all bills introduced or amended through April 7, 2017. The report is submitted in conformance with the following requirements of G.S. 164-43:

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

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

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

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

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

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on April 7, 2017.

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

THE OFFENSE CLASSIFICATION CRITERIA

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

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

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

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

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

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

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

- B** • Serious debilitating long-term personal injury

- C** • Serious long-term personal injury
• Serious long-term or widespread societal injury

- D** • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling

- E** • Serious personal injury

- F** • Significant personal injury
• Serious societal injury

- G** • Serious property loss
Loss from the person or the person's dwelling

- H** • Serious property loss:
Loss from any structure designed to house or secure any activity or property
Loss occasioned by the taking or removing of property
Loss occasioned by breach of trust, formal or informal
- Personal injury
 - Significant societal injury

- I** • Serious property loss:
All other felonious property loss
- Societal injury

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

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

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

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

CLASS CRITERIA

(FELONY)

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

(MISDEMEANOR)

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #2 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
APRIL 7, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 196	Zip Lines/Challenge Courses/Sanders' Law [Ed. 2]	G.S. 95-112.16(h) (serious injury)	E	Consistent		1
		G.S. 95-112.16(h) (death)	E	Consistent		2
HB 201	NC Constitutional Carry Act [Ed. 1]	G.S.14-415.35	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	3
HB 230	Revised Uniform Athlete Agents Act [Ed. 1]	G.S. 78C-124(a)	H	Consistent		4
		G.S. 78C-124(b)	H	Consistent		5
HB 249	Economic Terrorism [Ed. 1]	G.S. 14-10.1	H	Consistent		9
HB 274	Increase Penalties for Debt Adjusting	G.S. 14-424	H	Inconsistent	Would be consistent with a Class I felony.	12
HB 297	Amend Habitual DWI	G.S. 20-138.5	F	N/A	DWI offenses are not classified under Structured Sentencing.	13
HB 325	Amend Arson Law/Prosecutor Funds [Ed. 2]	G.S. 14-67.2	D	Inconsistent	Would be consistent with a Class F felony.	14
HB 374	2017 DOL Technical Changes-AB [Ed. 1]	G.S. 95-125.3(h) (serious injury)	E	Consistent		17
		G.S. 95-125.3(h) (death)	E	Consistent	Would also be consistent with a Class F felony.	18
HB 384	Increase Penalties/Organized Retail Theft [Ed. 2]	G.S. 14-72.11(5)	H	Consistent		21
		G.S. 14-72.11(6)	H	Consistent		22
		G.S. 14-86.6(a1)(1)	G	Consistent		23
		G.S. 14-86.6(a1)(2)	G	Inconsistent	Would be consistent with a Class F felony.	24

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #2 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
APRIL 7, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 492	Increase Penalties for Certain Assaults [Ed. 3]	G.S. 14-34.11	I	Inconsistent	Assault, assault and battery, or affray on an officer or employee of the State or any political subdivision thereof, in the discharge or attempted discharge of official duties is a Class A1 misdemeanor. (G.S. 14-33(c)(4))	28
		G.S. 14-16.6(a)	H	Consistent		29
		G.S. 14-16.6(b)	E	Consistent		30
		G.S. 14-16.6(c)	E	Consistent		31
		G.S. 14-16.7(a)	H	Consistent		32
		G.S. 14-16.7(b)	H	Consistent		33
		G.S. 14-34.6(a)	H	Consistent		34
		G.S. 14-34.6(b)	F	Consistent		35
		G.S. 14-34.6(c)	E	Consistent		36
		G.S. 14-288.9(c) (physical injury)	H	Consistent		37
		G.S. 14-288.9(c) (dangerous weapon or substance)	E	Inconsistent	Would be consistent with a Class F felony.	38
HB 506	Chemical Endangerment of a Child [Ed. 1]	G.S. 14-318.6(a)	D	Inconsistent	Would be consistent with a Class F felony.	39
		G.S. 14-318.6(b)	G	Inconsistent	Would be consistent with a Class F felony.	40
		G.S. 14-318.6(c)	B1	Inconsistent	Would be consistent with a Class B2 felony.	41

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #2 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
APRIL 7, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 597	Willful Injury of Person/Trap in Public Park [Ed. 1]	G.S. 14-50.50(c)	H	Consistent		42
		G.S. 14-50.50(d)	E	Consistent		43
		G.S. 14-50.50(e)	One class higher than the offense committed	Inconsistent		44
SB 350	Amend Drug Laws/Ellison v. Treadway [Ed. 1]	G.S. 90-95(h)(4c)a.	G	N/A	The Offense Classification Criteria were not used in the classification of drug offenses.	45
		G.S. 90-95(h)(4c)b.	F	N/A	The Offense Classification Criteria were not used in the classification of drug offenses.	46
		G.S. 90-95(h)(4c)c.	D	N/A	The Offense Classification Criteria were not used in the classification of drug offenses.	47
SB 376	Limit Revolving Door Employment [Ed. 1]	G.S. 143-59.5	I	Consistent		48
SB 394	Legislative Cybersecurity Committee [Ed. 1]	G.S. 120-238.3(c)	I	Consistent		49
SB 409	Increase Penalties/Organized Retail Theft [Ed. 2]	G.S. 14-72.11(5)	H	Consistent		21
		G.S. 14-72.11(6)	H	Consistent		22
		G.S. 14-86.6(a1)(1)	G	Consistent		23
		G.S. 14-86.6(a1)(2)	G	Inconsistent	Would be consistent with a Class F felony.	24
SB 500	Strengthen Human Trafficking Law [Ed. 1]	G.S. 14-43.15(b)(1)(adult)	F	Consistent		50
		G.S. 14-43.15(b)(1)(child)	C	Consistent		51
		G.S. 14-43.15(b)(2)(adult)	D	Inconsistent	Would be consistent with a Class C or E felony.	52

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #2 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
APRIL 7, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-43.15(b)(2)(child)	C	Consistent		53
		G.S. 14-43.16	F	Consistent		54
SB 501	2017 DOL Technical Changes-AB [Ed. 1]	G.S. 95-125.3(h) (serious injury)	E	Consistent		17
		G.S. 95-125.3(h) (death)	E	Consistent	Would also be consistent with a Class F felony.	18
SB 520	Emergency Worker Protection Act	G.S. 14-34.5(a)	D	Inconsistent	Would be consistent with a Class C or E felony.	55
		G.S. 14-34.5(a1)	D	Inconsistent	Would be consistent with a Class C or E felony.	56
		G.S. 14-34.5(b)	D	Inconsistent	Would be consistent with a Class C or E felony.	57
		G.S. 14-34.6(b)	G	Inconsistent	Would be consistent with a Class F felony.	58
		G.S. 14-34.6(c)	E	Consistent		59
		G.S. 14-34.7(a)	E	Consistent		60
		G.S. 14-34.7(a1)	E	Consistent		61
		G.S. 14-34.7(b)	E	Consistent		62
		G.S.14-34.7(c)	H	Consistent		63
		G.S. 14-288.9(c) (physical injury)	H	Consistent		64
		G.S. 14-288.9(c) (dangerous weapon or substance)	E	Inconsistent	Would be consistent with a Class F felony.	65
		G.S. 14-31(b)	D	Inconsistent		66

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #2 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
APRIL 7, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
SB 532	Landowner Encroachment and Timber Theft Act [Ed. 1]	G.S. 14-136	H	Consistent		67
SB 548	Strengthen Human Trafficking Laws/Studies [Ed. 1]	G.S. 14-43.11(b)(adult)	C	Consistent		68
		G.S. 14-43.11(b)(minor)	B1	Inconsistent	Would be consistent with a Class C felony.	69
SB 600	Britny's Law: IPV Homicide [Ed. 1]	G.S. 14-17	A	Inconsistent		70
SB 628	Various Changes to the Revenue Laws [Ed. 1]	G.S. 105-236(a)(7) (violation < \$100,000)	F	Consistent		71
		G.S. 105-236(a)(7)(violation ≥ \$100,000)	C	Consistent		72
		G.S. 105-236(a)(9)	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	73

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 196 – Zip Lines/Challenge Courses/Sanders’ Law [Ed. 2]

STATUTE

§ 95-112.16. Violations; civil penalties; appeal; criminal penalties.

DESCRIPTION

Subsection (h):

A person who

1. willfully
2. violates any provision of Article 14C of Chapter 95, Zip Line and Challenge Course Safety, and in so doing
3. causes the serious injury
4. of any person.

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.

A willful violation of Article 14B of Chapter 95, the Amusement Device Safety Act of North Carolina, causing serious injury to any person is a Class E felony. (G.S. 95-111.13(j))

- The Sentencing Commission reviewed this provision in April 2015 in HB 39/SB 75, Labor/Up Amusement Device Penalties. The Commission found it to be consistent with the Offense Classification Criteria for a Class E felony.

The Sentencing Commission reviewed this provision in 2016 in HB 1043, Zip Line and Challenge Course Safety Act, and found it to be consistent with a Class E felony.

FINDINGS

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

DATE OF REVIEW: 04/07/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 196 – Zip Lines/Challenge Courses/Sanders’ Law [Ed. 2] (cont’d)

STATUTE

§ 95-112.16. Violations; civil penalties; appeal; criminal penalties.

DESCRIPTION

Subsection (h):

A person who

1. willfully
2. violates any provision of Article 14C of Chapter 95, Zip Line and Challenge Course Safety, and in so doing
3. causes the death
4. of any person.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

A willful violation of Article 14B of Chapter 95, the Amusement Device Safety Act of North Carolina, causing death to any person is a Class E felony. (G.S. 95-111.13(j))

- The Sentencing Commission reviewed this provision in April 2015 in HB 39/SB 75, Labor/Up Amusement Device Penalties. The Commission found it to be consistent with the Homicide Offense Classification Criteria for a Class E felony, with a note stating that it would also be consistent with the Homicide Offense Classification Criteria for a Class F felony.

The Sentencing Commission reviewed this provision in 2016 in HB 1043, Zip Line and Challenge Course Safety Act, and found it to be consistent with the Homicide Offense Classification Criteria for a Class E felony.

Patient abuse and neglect, culpably negligent conduct proximately causes death is a Class E felony. (G.S. 14-32.2(b)(2))

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.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 201 – NC Constitutional Carry Act [Ed. 1]
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STATUTE

§ 14-415.35. Carrying concealed handguns.

DESCRIPTION

Subdivision (d):

A person who

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

PROPOSED OFFENSE CLASS

Class H felony, second and subsequent offenses.

ANALYSIS

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

G.S. 14-415.35(e) provides the list of persons for whom it is unlawful to carry a concealed weapon, that list includes but is not limited to, persons under indictment for a felony; persons adjudicated guilty of a felony unless that offense pertains to antitrust violations, unfair trade practices, or restraints of trade, or his firearms rights have been restored; fugitives from justice; drug addicts; persons dishonorably discharged from the military; and persons convicted of impaired driving offenses within last three years.

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

The Commission reviewed an identical provision in HB 69 at the February Commission meeting and found it to be inconsistent because the Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

FINDINGS

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

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 230– Revised Uniform Athlete Agents Act [Ed. 1]

STATUTE

§ 78C-124. Prohibited conduct.

DESCRIPTION

Subsection (a):

A person who

1. is an athlete agent and
2. intends to influence a covered athlete, or if the covered athlete is a minor, a parent or guardian of the covered athlete
3. to enter into an agency contract
4. and takes any of the follow actions or encourages any other individual to take or assist any other individual in taking any of the following actions on behalf of the athlete agent:
 - a. give materially false or misleading information or make a materially false promise or representation
 - b. furnish anything of value to the covered athlete
 - c. furnish anything of value to an individual other than the covered athlete or another registered athlete agent.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Currently, this conduct is punished under G.S. 78C-98 as a Class I felony. This provision expands the elements of the existing offense to include the parent or guardian of the covered athlete if the covered athlete is a minor and to include encouraging others to take the listed actions on behalf of the athlete agent.

In December 2016, the Sentencing Commission reviewed this provision at the request of the General Statutes Commission. The Commission found that this offense would be consistent with a Class I or H felony, depending on the significance of the harm. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant societal injury as Class H felonies and those that simply result in societal injury as Class I felonies. The Commission felt that the proposed offenses result in societal injury but that it was not in a position to determine how significant the harm is.

FINDINGS

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

DATE OF REVIEW: 04/07/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 230 – Revised Uniform Athlete Agents Act [Ed. 1] (cont'd)
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STATUTE

§ 78C-124. Prohibited conduct.

DESCRIPTION

Subsection (b)

A person who

1. is an athlete agent
2. who is not registered under Article 10 of Chapter 78C of the General Statutes and
3. intentionally either
 - a. initiates contact, directly or indirectly, with a covered athlete or if the covered athlete is a minor, a parent or guardian of the covered athlete to recruit or solicit the covered athlete, parent, or guardian to enter an agency contract or
 - b. encourage any other individual to do so on behalf of the athlete agent.

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.

In December 2016, the Sentencing Commission reviewed this provision at the request of the General Statutes Commission. The Commission found that this offense would be consistent with a Class H felony.

FINDINGS

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 230: REVISED UNIFORM ATHLETE AGENTS ACT

PREPARED: MARCH 23, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING¹

This Bill repeals Article 9 of Chapter 78C, The Uniform Athlete Agents Act, and replaces it with Article 10 of Chapter 78C, the Revised Uniform Athlete Agents Act. In so doing, this bill changes the classification of an existing Class I felony into a Class H felony while expanding the scope of the offense, and creates two new offenses, one Class H felony and one Class 1 misdemeanor.

Currently, G.S. 78C-98(a), Prohibited conduct, provides that it shall be a Class I felony for any athlete agent, with the intent to induce a student athlete to enter into an agency contract, to: (1) give any materially false or misleading information or make a materially false promise or representation; (2) furnish anything of value to the student athlete before the student athlete enters into the agency contract; (3) furnish anything of value to any individual other than the student athlete or another registered athlete agent. This bill recodifies G.S. 78C-98(a) as G.S. 78C-124(a), Prohibited conduct, and reclassifies the offense as a Class H felony pursuant to G.S. 78C-125, Criminal penalties. This bill also expands the scope of the offense by expanding the definition of athlete agent, covered athlete to include former student athletes, and by expanding the prohibited conduct to include influencing the parents or guardians of a minor covered athlete, and encouraging others to act on behalf of the agent.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 78C-98(a). The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed G.S. 78C-124(a) because of the higher rate of active sentences (35% for Class H compared to 15% for Class I) and longer average estimated time served (11 months for Class H compared to 7 months for Class I). The following table shows the estimated annual impact if, for example, there were 9 convictions (threshold) or 20 convictions (example) per year that would be reclassified from Class I to Class H. 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
9	2	3	3	3	3
20	5	6	6	6	6

It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2016, 35% 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

¹ 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.

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	10	10	10	10

This bill also creates a new Class H felony. Proposed G.S. 78C-124(b) provides that, unless registered under Article 10, an athlete agent shall not intentionally (i) initiate contact, directly or indirectly, with a covered athlete or, if the covered athlete is a minor, a parent or guardian of the covered athlete to recruit or solicit the covered athlete, parent, or guardian to enter an agency contract or (ii) encourage any other individual to do so on behalf of the athlete agent. Pursuant to G.S. 78C-125, violation of this section shall be a Class H felony. Currently, G.S. 78C-98(b)(1) prohibits any athlete agent from intentionally initiating contact with a student athlete unless the student athlete is registered under Article 9 of Chapter 78C, but it is not a criminal offense.

Since the proposed bill 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 2016, 35% 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	10	10	10	10

Finally, this bill creates a new Class 1 misdemeanor. Proposed G.S. 78C-124(c) prohibits an athlete agent from intentionally: (2) failing to retain or permit inspection of the records required to be retained by G.S. 78C-123. (3) Failing to register as required by G.S. 78C-114. (4) Providing materially false or misleading information in an application for registration or renewal of registration. (5) Predating or postdating an agency contract. (6) Failing to notify a covered athlete, or if he is a minor, a parent or guardian of the covered athlete, before the covered athlete, parent, or guardian an agency contract for a particular sport that the signing may make the covered athlete ineligible to participate as a student athlete in that sport. Pursuant to G.S. 78C-125, violation of this section shall be a Class 1 misdemeanor. Currently, G.S. 78C-98(b) prohibits an athlete agent from carrying out much of the same conduct, but it is not a criminal offense.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2016, 31% 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, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Effective December 1, 2017, and applies to acts and omissions occurring on or after that date. Prosecutions for offenses committed before the effective date of this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2016 Structured Sentencing Simulation Data

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 249 – Economic Terrorism [Ed. 1]

STATUTE

§ 14-10.1 Terrorism

DESCRIPTION

Subsection (b1):

A person who:

1. willfully and maliciously or with reckless disregard
2. commits a criminal offense that impedes or disrupts the regular course of business
3. the disruption results in damages of more than one thousand dollars and
4. the offense is committed with the intent to do either of the following:
 - a. intimidate the civilian population at large, or an identifiable group of the civilian population, or
 - b. influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

A person is guilty of violent terrorism if the person commits an act of violence, as defined by G.S. 14-10.1(a), with the intent to intimidate the civilian population at large, or an identifiable group of the civilian population, or influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government. This offense is punished at one class higher than the underlying act of violence, unless the underlying act of violence is a Class A or Class B1 felony offense, which would then be punished as a B1 felony.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS 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

HB 249: ECONOMIC TERRORISM

PREPARED: MARCH 8, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING¹

This bill creates one felony offense and two misdemeanor offenses.

SECTION 1. This Section amends G.S. 14-10.1. Terrorism, by adding a felony offense. Subsection (b1) makes it a Class H felony for a person to willfully and maliciously or with reckless disregard commit a criminal offense that impedes or disrupts the regular course of business, the disruption results in damages of more than one thousand dollars (\$1,000), and the offense is committed with the intent to do either of the following:

- (1) Intimidate the civilian population at large, or an identifiable group of the civilian population.
- (2) Influence, through intimidation, the conduct or activities of the government of the United States, a state, or any unit of local government.

A violation of this subsection is a separate offense from the underlying offense and does not merge with other offenses.

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 2016, 35% 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	10	10	10	10

SECTION 4. This Section amends G.S. 14-159.13. Second degree trespass, by adding a misdemeanor offense. Subsection (c) makes it a Class 1 misdemeanor for any person, with listed exceptions, to remain at the place of any riot or unlawful assembly after having been lawfully warned to disperse. Currently, this conduct would be covered under subsection (a) of this statute, a Class 3 misdemeanor. This conduct may also be covered under G.S. 14-288.5. Failure to disperse when commanded, a Class 2 misdemeanor.

There were 4,669 Class 3 misdemeanor convictions under subsection (a) of G.S. 14-159.13 in FY 2016. It is not known how many of these convictions would be violations of the proposed Class 1 misdemeanor or how many additional convictions may result from the amendment of the current statute. In FY 2016, 31% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 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, Class 3 convictions for this offense that would be reclassified to Class 1 convictions or any

¹ 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.

additional convictions that may result under this proposed amendment 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.

In addition, there were 15 Class 2 misdemeanor convictions under G.S. 14-288.5 in FY 2016. It is not known how many of these convictions would be violations of the proposed Class 1 misdemeanor. In FY 2016, 31% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 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, if any of the Class 2 convictions for this offense would be convicted under the proposed amendment as a Class 1 misdemeanor, those convictions would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

SECTION 6. This Section amends G.S. 20-174.1. Standing, sitting or lying upon highways or streets prohibited, by adding a misdemeanor offense. Subsection (c) makes it a Class A1 misdemeanor for a person to violate subsection (a) of this statute by participation in a riot or other unlawful assembly. Currently, this conduct would be covered under subsection (a) of this statute, a Class 2 misdemeanor. This conduct may also be covered under G.S. 14-288.2. Riot, a Class 1 misdemeanor.

In FY 2016, there were no Class 2 convictions for violations of subsection (a) of G.S. 20-174.1, participation in a riot or other unlawful assembly. It is not known how convictions may result from the amendment of the current statute. In FY 2016, 35% of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 68 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed amendment 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.

In addition, there were 32 Class 1 misdemeanor convictions under G.S. 14-288.2 in FY 2016. It is not known how many of these convictions would be violations of the proposed Class A1. In FY 2016, 35% of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 68 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, if any of the Class 1 convictions for this offense would be convicted under the proposed amendment as a Class A1 misdemeanor, those convictions would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Effective December 1, 2017, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2016 Structured Sentencing Simulation Data

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 274 – Increase Penalties for Debt Adjusting [Ed. 1]

STATUTE

§ 14-424. Engaging, etc. in business of debt adjusting a ~~misdemeanor~~-illegal.

DESCRIPTION

A person who

1. engages in, or offers to or attempts to engage in the business or practice of debt adjusting, or acts, offers to act, or attempts to act as a debt adjuster and
2. either:
 - a. the business practice involves an aggregate payment of money or property by one or more debtors valued at five thousand dollars (\$5,000) or more, or
 - b. the business or practice involves five or more debtors.

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.

It is currently a Class 2 misdemeanor for a person to engage in the business or practice of debt adjusting or to act as a debt adjuster; this bill also proposes raising this offense to a Class 1 misdemeanor.

FINDINGS

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

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 297 – Amend Habitual DWI [Ed. 1]

STATUTE

§ 20-138.5. Habitual impaired driving.

DESCRIPTION

A person who

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

PROPOSED OFFENSE CLASS

Class F felony.

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

ANALYSIS

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

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

The Sentencing Commission reviewed an identical provision in HB 32 on March 6, 2015 and found that the Offense Classification Criteria were not applicable because driving while impaired offenses are not classified under Structured Sentencing.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Driving While Impaired offenses are not classified under Structured Sentencing.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 325 – Amend Arson Law/Prosecutor Funds [Ed. 2]

STATUTE

§ 14-67.2. Burning caused during commission of another felony.

DESCRIPTION

A person who

1. during the commission of a felony
2. by means of fire or explosive
3. knowingly damages or causes, aids, abets, advises, encourages, hires, counsels, or procures another to damage any dwelling, structure, building or conveyance referred to in Article 15 of Chapter 14 of the General Statutes.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses the reasonably tend to result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Arson in the first degree is a Class D felony. (G.S. 14-58)

Burning of churches and certain other religious buildings is a Class E felony. (G.S. 14-62.2)

Burning of buildings is a Class F felony. (G.S. 14-62)

Arson in the second degree is a Class G felony. (G.S. 14-58)

Burning of boats and barges is a Class H felony. (G.S. 14-65)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 325: AMEND ARSON LAW/PROSECUTOR FUNDS

PREPARED: MARCH 30, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING¹

This bill creates one new Class D felony and expands an existing Class E felony.

Section 1.

This bill creates section G.S. 14-67.2, Burning caused during commission of another felony. This bill makes it a Class D felony for any person to knowingly damage or cause, aid, abet, advise, encourage, hire, counsel or procure another to damage, any dwelling, structure, building or conveyance by means of fire or explosive during the commission of a felony. This new felony could be charged in conjunction with any other felony, if the elements above are met.

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. Under Structured Sentencing, all Class D offenders are required to receive an active sentence.² In FY 2016, the average estimated time served for an offender convicted of a Class D offense was 66 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 conviction (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
1	1	2	3	4	5
20	20	41	61	82	102

Since the new offense must occur during the commission of another felony, additional impact would occur if the sentence for the companion offense is run consecutive to the proposed Class D felony offense.

Some of the conduct covered by the proposed offense may currently be prosecuted in one of the existing offenses listed below, if the conduct occurred in conjunction with another felony offense. It is unclear whether a prosecution for this new felony would preempt the prosecution of any other burning related offenses, or if the two felonies could be charged in conjunction.

Statute	Offense	Class	# of Convictions
14-58	Arson in the first degree	D	11
14-58.2	Burning of mobile home	D	*
14-62.2	Burning of churches and certain other religious buildings	E	0
14-59	Burning of certain public buildings	F	0

¹A 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.

² 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).

14-60	Burning of schoolhouses or educational institutions	F	0
14-61	Burning of certain bridges and buildings	F	*
14-62	Burning of buildings	F	6
14-58	Arson in the second degree	G	36
14-62.1	Burning of building or structure in process of construction	H	0
14-63	Burning of boats and barges	H	*
14-64	Burning of ginhouses and tobacco houses	H	*
14-65	Fraudulently setting fire to dwelling houses	H	8
14-66	Burning of personal property	H	37
14-67.1	Burning other buildings	H	*

* The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of these offenses. The lack of an AOC offense code is some indication that these offense are infrequently charged and/or infrequently result in convictions.

Source: NC Sentencing and Policy Advisory Commission, FY 2016 Structured Sentencing Simulation Data

There would be no additional prison impact if any of the Class D convictions listed above were convicted as a violation of the proposed Class D instead. Impact on the prison population will occur if any of the Class E, Class F, Class G, or Class H arson/burning convictions listed above become Class D convictions under the proposed statute because of the higher rates of active sentences (63% for Class E, 50% for Class F, 39% for Class G, and 35% for Class H compared to the required active sentence for the proposed Class D) and longer average estimated time served (27 months for Class E, 17 months for Class F, 14 months for Class G, and 11 months for Class H compared to 66 months for the proposed Class D).

Section 2.

This bill expands existing G.S. 14-69.3. Arson or other unlawful burning that results in serious injury to a ~~firefighter or firefighter~~, law enforcement officer, fire investigator, or emergency medical technician. This bills expands the scope of the offense to cover the additional positions of law enforcement officer and fire investigator. Violation of this offense is a Class E felony.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-69.3. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2016, 63% 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	13	28	34	34	35

Both sections are effective December 1, 2017 and apply to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2016 Structured Sentencing Simulation Data

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 374/SB 501 – 2017 DOL Technical Changes-AB [Ed. 1]

STATUTE

§ 95-125.3. Violations; civil penalties; appeal; criminal penalties.

DESCRIPTION

Subsection (h):

A person who

1. causes serious injury
2. of any person
3. through the willful violation of
4. any provision of Article 15, Passenger Tramway Safety, of Chapter 95 of the General Statutes.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

Article 15 of Chapter 95 of the General Statutes governs the set-up, inspection, and operation of ski tows, lifts, tramways and related devices.

The Commission reviewed a similar bill in 2015, HB 39/SB 75, Labor/Up Amusement Device Penalties, and found the provision to be consistent with a Class E felony.

FINDINGS

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

DATE OF REVIEW: 04/07/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 374/SB 501 – 2017 DOL Technical Changes-AB [Ed. 1] (cont'd)

STATUTE

§ 95-125.3. Violations; civil penalties; appeal; criminal penalties.

DESCRIPTION

Subsection (h):

A person who

1. causes the death
2. of any person
3. through the willful violation of
4. any provision of Article 15, Passenger Tramway Safety, of Chapter 95 of the General Statutes.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

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

Article 15 of Chapter 95 of the General Statutes governs the set-up, inspection, and operation of ski tows, lifts, tramways and related devices.

The Sentencing Commission reviewed a similar provision in April 2015 in HB 39/SB 75, Labor/Up Amusement Device Penalties. The Commission found it to be consistent with the Homicide Offense Classification Criteria for a Class E felony, with a note stating that it would also be consistent with the Homicide Offense Classification Criteria for a Class F felony.

FINDINGS

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

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

Homicide Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 374: 2017 DOL TECHNICAL CHANGES – AB

PREPARED: APRIL 5, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING¹

This bill creates one felony offense and two misdemeanor offenses.

This bill amends Article 15, Passenger Tramway Safety, of Chapter 95 of the General Statutes, which provides for the registration and standardization of design and operational practices of all ski lift devices and passenger tramways in the State. This bill enacts several new statutory sections including one outlining certain reports required to be submitted to the Department of Labor by the owners and operators of regulated devices. New G.S. 95-125.3, Violations; civil penalties; appeal; criminal penalties, creates two new misdemeanor offenses and one new felony offense.

G.S. 95-125.3(g) provides that no person shall willfully violate any provision of Article 15 of Chapter 95; a first offense is a Class 2 misdemeanor. G.S. 95-125.3(g) further provides that if the conviction is for a violation committed after a first conviction, the person shall be guilty of a Class 1 misdemeanor.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for a first offense of the proposed Class 2 misdemeanor. In FY 2016, 34% of Class 2 misdemeanor convictions resulted in active sentences, with an average sentence length of 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

It is also not known how many offenders might be convicted and sentenced for a violation committed after a first conviction, a proposed Class 1 misdemeanor. In FY 2016, 31% 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, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

G.S. 95-125.3(h) provides that any willful violation of any provision of Article 15 of Chapter 95 that causes the serious injury or death of any person is a Class E felony. This section specifically states that a prosecuting officer of the State of North Carolina shall not be prevented from proceeding against a person who violates Article 15 of Chapter 95 on a prosecution charging any degree of willful or culpable homicide. Accordingly, this conduct may be covered under G.S. 14-17(a), murder in the first degree, a Class A felony; G.S. 14-17(b), murder in the second degree, a Class B1 or B2 felony; or G.S. 14-18, voluntary manslaughter, a Class D felony, and involuntary manslaughter, a Class F felony.

¹ 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.

Since the proposed bill 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 2016, 63% 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	13	28	34	34	35

It is not known if any of the current convictions prosecuted and sentenced under G.S. 14-17(a), murder in the first degree, a Class A felony; G.S. 14-17(b), murder in the second degree, a Class B1 or B2 felony; or G.S. 14-18, voluntary manslaughter, a Class D felony involved conduct covered by the proposed Class E felony. Since the offenses are a more serious class than the proposed offense, any violations of this offense that would be prosecuted under the proposed offense would not be expected to have an impact on the prison population.

In FY 2016, there were 48 involuntary manslaughter convictions, a Class F felony. It is not known how many of these Class F convictions involved conduct covered by the proposed Class E felony. Impact on the prison population will occur if Class F convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (50% for Class F compared to 63% for Class E) and longer average estimated time served (17 months for Class F compared to 27 months for Class E). The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold for Class F), 20 convictions (example) or 48 convictions (see data above) that would be reclassified from Class F to Class E 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. In addition, there will be some impact on post-release supervision caseloads since Class E requires an additional three months of supervision.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	0	1	1	1	1
20	3	10	15	15	16
48	6	22	33	34	34

Effective July 1, 2017.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2016 Structured Sentencing Simulation Data

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 384/SB 409 – Increase Penalties/Organized Retail Theft [Ed. 2]

STATUTE

§ 14-72.11. Larceny from a merchant.

DESCRIPTION

Subsection (5):

A person who

1. exchanges
2. stolen property
3. for something of value, cash, a gift card, or a merchandise card.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Currently, larceny from a merchant is a Class H felony in the following circumstances:

- Larceny while existing through marked emergency door with property worth more than \$200
- Larceny while removing, destroying, or deactivating a component of an antishoplifting or inventory control device
- Larceny by affixing a fraudulent product code
- Larceny of infant formula in excess of one hundred dollars (\$100)

Larceny of property worth more than \$1,000 is a Class H felony. (G.S. 14-72)

Receiving stolen goods or possessing stolen goods worth more than \$1,000 is a Class H felony. (G.S. 14-72)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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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 384/SB 409 – Increase Penalties/Organized Retail Theft [Ed. 2]
(cont'd)

STATUTE

§ 14-72.11. Larceny from a merchant.

DESCRIPTION

Subsection (6):

A person who

1. exchanges property
2. knowing or having reasonable grounds to believe the property is stolen
3. for case, a gift card, a merchandise card, or some other item of value
4. while utilizing fictitious identification to prevent the merchant from properly identifying the person seeking to return the property.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Currently, larceny from a merchant is a Class H felony in the following circumstances:

- Larceny while existing through marked emergency door with property worth more than \$200
- Larceny while removing, destroying, or deactivating a component of an antishoplifting or inventory control device
- Larceny by affixing a fraudulent product code
- Larceny of infant formula in excess of one hundred dollars (\$100)

Larceny of property worth more than \$1,000 is a Class H felony. (G.S. 14-72)

Receiving stolen goods or possessing stolen goods worth more than \$1,000 is a Class H felony. (G.S. 14-72)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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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 384/SB 409 – Increase Penalties/Organized Retail Theft [Ed. 2] (cont'd)
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STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subdivision (a1)(1):

A person who

1. conspires with another person to commit theft of retail property from retail establishments,
2. with a value exceeding twenty thousand dollars (\$20,000) aggregated over a 90-day period,
3. with the intent to sell that retail property for monetary or other gain, and
4. who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

It is a Class H felony if the person conspires with another person to commit theft of retail property from retail establishments with a value exceeding one thousand five hundred dollars (\$1,500) aggregated over a 90-day period with the intent to sell that retail property for monetary or other gain and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration. (G.S. 14-86.6 (a)(1))

It is a Class H felony if a person receives or possess any retail property that has been taken or stolen pursuant to 14-86.6 while knowing or having reasonable ground to believe the property is stolen. (G.S. 14-86.6(a)(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: 04/07/17

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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 384/SB 409 – Increase Penalties/Organized Retail Theft [Ed. 2]
(cont'd)

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subdivision (a1)(2):

A person who

1. acts as leader of two or more other persons associated for the purpose of engaging in conduct in violation of this section
2. if the person conspires with others as an organizer, supervisor, financier, or manager
3. to engage for profit
4. in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant.

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 the person's dwelling as Class G felonies.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 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: 04/07/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 384: INCREASE PENALTIES/ORGANIZED RETAIL THEFT

PREPARED: MARCH 22, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING¹

This bill creates four new felony offenses and expands one existing misdemeanor offense.

SECTION 1. This section amends existing G.S. 14-72.11, Larceny from a merchant, by adding two new felony offenses.

Subsection (5) makes it a Class H felony for a person to exchange stolen property for something of value, cash, a gift card, or a merchandise card.

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 2016, 35% 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	10	10	10	10

Violations of the proposed offense in subsection (5) could currently be prosecuted under G.S. 14-100, Obtaining property by false pretenses, a Class H felony if the value of the property is less than \$100,000, a Class C felony if the value of the property is \$100,000 or more. In FY 2016, there were 1,874 convictions for violations of obtaining or attempting to obtain property by false pretenses for property valued less than \$100,000 and 5 convictions for property valued at \$100,000 or more. It is not known whether any of the Class H or Class C convictions under G.S. 14-100 involved conduct covered by the proposed Class H offense. Since the offenses are in the same class or a more serious class than the proposed offense, any violations of this offense that would be prosecuted under the proposed offense would not be expected to have an impact on the prison population.

Subsection (6) makes it a Class H felony for a person to return stolen property and utilize fictitious identification to prevent the merchant from properly identifying the person seeking to return the property.

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 2016, 35% of Class H convictions resulted in active

¹ 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.

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	10	10	10	10

SECTION 2. This section amends existing G.S. 14-86.6, Organized retail theft, to add two new felony offenses.

Subdivision (a1)(1) makes it a Class G felony for a person to conspire with another person to commit theft of retail property from retail establishments, with a value exceeding twenty thousand dollars (\$20,000) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

Violations of the proposed offense in subdivision (a1)(1) would currently be prosecuted under existing subdivision (a)(1). Existing subdivision (a)(1) makes it a Class H felony for a person to commit this offense and the value of the retail property exceeds one thousand five hundred dollars (\$1,500).

In FY 2016, there were 15 Class H felony convictions under existing subsection (a). It is not known if any of these convictions were under subdivision (a)(1) and if any exceed a property value of more than \$20,000. Impact on the prison population will occur if Class H convictions become Class G convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 39% for Class G) and longer average estimated time served (11 months for Class H compared to 14 months for Class G). The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold for Class H), 15 convictions (see data above), or 20 convictions (example) that would be reclassified from Class H to Class G 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
15	1	2	3	3	3
20	1	4	4	4	4

Subdivision (A1)(2) makes it a Class G felony for a person to act as leader of an organized retail theft enterprise if the person conspires with others as an organizer, supervisor, financier, or manager to engage for profit in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant. This bill adds a statutory definition of "Organized retail theft enterprise" as two or more persons who associate for the purpose of engaging in the conduct of organized retail theft.

Since the proposed subdivision 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 2016, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 14 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	14	14	14	14

SECTION 3. This section amends existing G.S. 66-387, Definitions, to clarify that the definition of “Currency converter” to indicate that “goods” include a gift card or merchandise card of any value not issued by the person, and to add an itinerant merchant as defined in G.S. 66-250(1), and a Web site located in North Carolina. To the extent that that these amendments expand the definition of “Currency converter,” there could be additional violations of G.S. 66-392, Record-keeping requirements for cash converters. A knowing violation is a Class 2 misdemeanor pursuant to G.S. 66-396, Penalties.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 66-392. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2016, 34% of Class 2 misdemeanor convictions resulted in active sentences, with an average sentence length of 21 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, additional convictions that result from the proposed broadening of the current statute would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

Effective December 1, 2017, and applies to offenses committed on or after that date.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2016 Structured Sentencing Simulation Data

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3]

STATUTE

§ 14-34.11. Simple assault on an officer or employee of the State or local government.

DESCRIPTION

A person who

1. assaults an officer or employee of the State or any political subdivision of the State
2. when the officer or employee is discharging or attempting to discharge his or her official duties.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont'd)

STATUTE

G.S. 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

Any person who

1. assaults any legislative officer, executive officer, or court officer or
2. assaults another person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties or
3. makes a violent attack upon the residence, office, temporary accommodation or means of transport of any one of those officers or persons in a manner likely to endanger the officer or person.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

Assault on another person that inflicts physical injury by strangulation is a Class H felony. (G.S. 14-32.4(b))
Assault on a firefighter, emergency medical technician, medical responder, emergency department nurse, or hospital personnel while in the discharge of their official duties that inflicts serious bodily injury or uses a non-firearm deadly weapon is a Class H felony. (G.S. 14-34.6(b))

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont'd)

STATUTE

G.S. 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (b):

Any person who

1. assaults any legislative officer, executive officer, or court officer or
2. assaults another person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties or
3. makes a violent attack upon the residence, office, temporary accommodation or means of transport of any one of those officers or persons in a manner likely to endanger the officer or person and
4. uses a deadly weapon in the commission of the offense.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers is a Class F felony. (G.S. 14-34.2)

Assault or affray with a firearm on an emergency medical technician, ambulance attendant, emergency department nurse, or hospital personnel while in discharge of their official duties is a Class F felony. (G.S. 14-34.6(c))

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

Assault with a deadly weapon with intent to kill is a Class E felony. (G.S. 14-32(c))

Assault with a firearm on a law enforcement officer, probation or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility is a Class E felony. (G.S. 14-34.5)

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont’d)

STATUTE

G.S. 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (c):

Any person who

1. assaults any legislative officer, executive officer, or court officer or
2. assaults another person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer’s duties or
3. makes a violent attack upon the residence, office, temporary accommodation or means of transport of any one of those officers or persons in a manner likely to endanger the officer or person and
4. inflicts serious bodily injury to any legislative officer, executive officer, or court officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4(a))

Certain assaults on a law enforcement, probation, or parole officer or on a member of the NC National Guard, or on a person employed at a State or local detention facility that inflict serious bodily injury are a Class F felony. (G.S. 14-34.7(a), (a1), (b))

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont'd)

STATUTE

G.S. 14-16.7. Threats against executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

Any person who

1. knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any legislative officer, executive officer, or court officer or
2. knowingly and willfully makes any threat to inflict serious bodily injury upon or kill any other person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer's duties

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont’d)

STATUTE

G.S. 14-16.7. Threats against executive, legislative, or court officer.

DESCRIPTION

Subsection (b):

Any person who

1. knowingly and willfully either
 - a. deposits for conveyance in the mail any letter, writing or other document or
 - b. sends an electronic communication which
2. contains a threat to commit an offense described in subsection (a) of this section.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

This bill defines “electronic communication” to include transmission through an electronic device, including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mail, instant message, text message, or voice mail.

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

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont'd)

STATUTE

G.S. 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

DESCRIPTION

Subsection (a):

Any person who

1. commits an assault or affray
2. causing physical injury on any of the following persons who are discharging or attempting to discharge their official duties
 - a. an emergency medical technician or other emergency health care provider
 - b. a medical responder
 - c. hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital
 - d. a firefighter.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

The Sentencing Commission classified offense 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: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont’d)

STATUTE

G.S. 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

DESCRIPTION

Subsection (b):

Any person who

1. violates subsection (a) of G.S. 14-34.6 and either
 - a. inflicts serious bodily injury or
 - b. uses a deadly weapon other than a firearm.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class F felony.

ANALYSIS

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

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4(a))

Certain assaults on a law enforcement, probation, or parole officer or on a member of the NC National Guard, or on a person employed at a State or local detention facility that inflict serious bodily injury are a Class F felony. (G.S. 14-34.7(a), (a1), (b))

Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers is a Class F felony. (G.S. 14-34.2)

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont’d)

STATUTE

G.S. 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.

DESCRIPTION

Subsection (c):

Any person who

1. violates subsection (a) of G.S. 14-34.6 and
2. uses a firearm.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers is a Class F felony. (G.S. 14-34.2)

Assault with a firearm on a law enforcement officer, probation or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility is a Class E felony. (G.S. 14-34.5)

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont'd)

STATUTE

G.S. 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

Any person who

1. commits an assault
2. causing physical injury
3. upon emergency personnel.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

Assault on another person that inflicts physical injury by strangulation is a Class H felony. (G.S. 14-32.4(b))

Assault on a firefighter, emergency medical technician, medical responder, emergency department nurse, or hospital personnel while in the discharge of their official duties that inflicts serious bodily injury or uses a non-firearm deadly weapon is a Class H felony. (G.S. 14-34.6(b))

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 492 – Increase Penalties for Certain Assaults [Ed. 3] (cont'd)

STATUTE

G.S. 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

Any person who

1. commits an assault
2. upon emergency personnel
3. with or through the use of any dangerous weapon or substance.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

Assault on a firefighter, emergency medical technician, medical responder, emergency department nurse, or hospital personnel by inflicting serious bodily injury or using a non-firearm deadly weapon is a Class H felony. (G.S. 14-34.6(b))

Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers is a Class F felony. (G.S. 14-34.2)

Assault or affray with a firearm on an emergency medical technician, ambulance attendant, emergency department nurse, or hospital personnel while in discharge of their official duties is a Class F felony. (G.S. 14-34.6(c))

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

Assault with a deadly weapon with intent to kill is a Class E felony. (G.S. 14-32(c))

Assault with a firearm on a law enforcement officer, probation or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility is a Class E felony. (G.S. 14-34.5)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 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: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 506 – Chemical Endangerment of a Child [Ed. 1]

STATUTE

§ 14-318.6. Chemical endangerment of a child; death of a child by chemical endangerment.

DESCRIPTION

Subsection (a) Intentional Chemical Endangerment of a Child:

A person who

1. intentionally
2. causes or permits a child less than 16 years of age to ingest, inhale, or have contact with
3. any controlled substance under Article 5 of Chapter 90 of the General Statutes.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as a Class D felony.

Child abuse inflicting serious injury is a Class D felony. (G.S. 14-318.4(a))

HB 506 includes an affirmative defense to violations of this section that the controlled substance was provided by lawful prescription for the child and that it was administered to the child in accordance with the prescription instructions provided with the controlled substance.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

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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 506 – Chemical Endangerment of a Child [Ed. 1] (cont'd)

STATUTE

§ 14-318.6. Chemical endangerment of a child; death of a child by chemical endangerment.

DESCRIPTION

Subsection (b) Negligent Chemical Endangerment of a Child:

A person who

1. in reckless disregard of the consequences of the action
2. causes or permits a child less than 16 years of age to ingest, inhale, or have contact with
3. any controlled substance under Article 5 of Chapter 90 of the General Statutes.

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.

Child abuse that constitutes a willful act or grossly negligent omission which shows a reckless disregard for human life and results in serious physical injury to the child is a Class G felony. (G.S. 14-318.4(a5))

Child abuse that constitutes a willful act or grossly negligent omission which shows a reckless disregard for human life and results in serious bodily injury to the child is a Class E felony. (G.S. 14-318.4(a4))

HB 506 includes an affirmative defense to violations of this section that the controlled substance was provided by lawful prescription for the child and that it was administered to the child in accordance with the prescription instructions provided with the controlled substance.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

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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 506 – Chemical Endangerment of a Child [Ed. 1] (cont'd)
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STATUTE

§ 14-318.6. Chemical endangerment of a child; death of a child by chemical endangerment.

DESCRIPTION

Subsection (c) Death of Child by Chemical Endangerment:

A person who

1. commits a violation of subsection (b) and
2. unintentionally causes the death of a child less than 16 years of age and
3. the violation of subsection (b) is the proximate cause of the death of the child.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing by malice as a Class B felony.

Murder by distribution of a listed substance in G.S. 14-17(b)(2) is a Class B2 felony.

HB 506 includes an affirmative defense to violations of this section that the controlled substance was provided by lawful prescription for the child and that it was administered to the child in accordance with the prescription instructions provided with the controlled substance.

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 Offense Classification Criteria for a Class B2 felony.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 597 – Willful Injury of Person/Trap in Public Park [Ed.1]

STATUTE

§ 14-50.50. Malicious injury through use of a trap in public parks; punishment.

DESCRIPTION

Subsection (c):

A person who

1. a. willfully and maliciously
b. sets a trap
c. in a public park
d. for the purpose of injuring another person, or
2. a. willfully and maliciously
b. aids or procures the setting of a trap
c. in a public park
d. for the purpose of injuring another person, and
3. inflicts physical injury on another 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.

This bill makes it a Class A1 misdemeanor for any person to willfully and maliciously set a trap in a public park for the purpose of injuring another person or to willfully and maliciously aid or procure the setting of a trap in a public park for the purpose of injuring another person. (G.S. 14-50.50(b))

FINDINGS

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

DATE OF REVIEW: 04/07/17

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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 597 – Willful Injury of Person/Trap in Public Park [Ed.1] (cont'd)

STATUTE

§ 14-50.50. Malicious injury through use of a trap in public parks; punishment.

DESCRIPTION

Subsection (d):

A person who

1. a. willfully and maliciously
b. sets a trap
c. in a public park
d. for the purpose of injuring another person, or
2. a. willfully and maliciously
b. aids or procures the setting of a trap
c. in a public park
d. for the purpose of injuring another person, and
3. inflicts serious injury on another person.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

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

Assault with a deadly weapon inflicting serious injury is a Class E felony. (G.S. 14-32(b))

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4(a))

This bill makes it a Class A1 misdemeanor for any person to willfully and maliciously set a trap in a public park for the purpose of injuring another person or to willfully and maliciously aid or procure the setting of a trap in a public park for the purpose of injuring another person. (G.S. 14-50.50(b))

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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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 597 – Willful Injury of Person/Trap in Public Park [Ed.1] (cont'd)

STATUTE

§ 14-50.50. Malicious injury through use of a trap in public parks; punishment.

DESCRIPTION

Subsection (e):

A person who

1. violates G.S. 14-50.50 (b), (c), or (d), and
2. the trap was camouflaged or concealed.

PROPOSED OFFENSE CLASS

One class higher than the offense committed.

(G.S. 14-50.50(b) would go from a Class A1 misdemeanor to a Class I felony.)

(G.S. 14-50.50(c) would go from a Class H felony to a Class G felony.)

(G.S. 14-50.50(d) would go from a Class E felony to a Class D felony.)

ANALYSIS

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

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

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D 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: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE:	SB 350 – Amend Drug Laws/Ellison v. Treadway [Ed. 1]
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STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subdivision (h)(4c)a.:

A person who

1. sells, delivers, transports, or possesses
2. 100 to 400 pills, tablets, or capsules
3. of a controlled substance that contains an opiate combined with a noncontrolled substance that is a commercial drug product with FDA approval.

PROPOSED OFFENSE CLASS

Class G felony, sentenced to a minimum term of 35 months and a maximum term of 42 months.

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.

A violation of this section shall be a felony known as “trafficking in pharmaceuticals.” Any person who sells, delivers, or possesses less than 100 pills, tablets, or capsules of a controlled substance that contains an opiate combined with a noncontrolled substance that is a commercial drug product with FDA approval, shall not be guilty of trafficking in pharmaceuticals but may be guilty of possession, manufacture, selling or delivery pursuant to G.S. 90-95(b) and (d).

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 Classification Criteria were not used in the classification of drug offenses.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 350 – Amend Drug Laws/Ellison v. Treadway [Ed. 1] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subdivision (h)(4c)b.:

A person who

1. sells, delivers, transports, or possesses
2. 400 to 600 pills, tablets, or capsules
3. of a controlled substance that contains an opiate combined with a noncontrolled substance that is a commercial drug product with FDA approval.

PROPOSED OFFENSE CLASS

Class F felony, sentenced to a minimum term of 70 months and a maximum term of 84 months.

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.

A violation of this section shall be a felony known as “trafficking in pharmaceuticals.” Any person who sells, delivers, or possesses less than 100 pills, tablets, or capsules of a controlled substance that contains an opiate combined with a noncontrolled substance that is a commercial drug product with FDA approval, shall not be guilty of trafficking in pharmaceuticals but may be guilty of possession, manufacture, selling or delivery pursuant to G.S. 90-95(b) and (d).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 350 – Amend Drug Laws/Ellison v. Treadway [Ed. 1] (cont'd)

STATUTE

§ 90-95. Violations; penalties.

DESCRIPTION

Subdivision (h)(4c)c.:

A person who

1. sells, delivers, transports, or possesses
2. 600 or more pills, tablets, or capsules
3. of a controlled substance that contains an opiate combined with a noncontrolled substance that is a commercial drug product with FDA approval.

PROPOSED OFFENSE CLASS

Class D felony, sentenced to a minimum term of 175 months and a maximum term of 219 months.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

A violation of this section shall be a felony known as “trafficking in pharmaceuticals.” Any person who sells, delivers, or possesses less than 100 pills, tablets, or capsules of a controlled substance that contains an opiate combined with a noncontrolled substance that is a commercial drug product with FDA approval, shall not be guilty of trafficking in pharmaceuticals but may be guilty of possession, manufacture, selling or delivery pursuant to G.S. 90-95(b) and (d).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Offense Classification Criteria were not used in the classification of drug offenses.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 376 – Limit Revolving Door Employment [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (b):

A person who

1. submits a certification
2. required by G.S. 143-59.5(b)
3. knowing it to be false.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 143-59.5(b) provides that the Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor will not use a former State employee in the administration of a contract with the State in violation of the provisions of G.S. 143-59.5(a).

G.S. 143-59.5(a) provides that the Secretary of Administration and other entities to which the Article applies shall not contract for goods or services with a vendor that employs or contracts with a person who is a former State employee and uses that person in the administration of a contract with the State.

FINDINGS

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 394 – Legislative Cybersecurity Committee [Ed. 1]

STATUTE

§ 120-238.3. Nondisclosure requirements.

DESCRIPTION

Subsection (c):

A person who

1. willfully or intentionally
2. discloses information
3. covered by the nondisclosure agreement.

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. 120-238.3 outlines the requirements for nondisclosure agreements to be signed by each appointee to the Legislative Cybersecurity Committee. It provides that the nondisclosure agreement shall contain at least: (1) a description of the parties to the agreement; (2) a definition of the types of information covered by the agreement; (3) the period of nondisclosure; (4) exclusions from the agreement; (5) a description of how to handle information covered by the agreement that is received by the member; (6) types of permissible disclosure, such as those required by a court order. Disclosure of information covered by the nondisclosure agreement constitutes grounds for removal from the Committee.

FINDINGS

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 500 – Strengthen Human Trafficking Law [Ed. 1]

STATUTE

§ 14-43.15. Profiting from human trafficking.

DESCRIPTION

Subdivision (b)(1):

A person who

1. profits from human trafficking,
2. while engaging in a violation of G.S 14-43.11 or 14-43.12, and
3. the victim of the violation is an adult.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

G.S. 14-43.15(a) provides that a person commits the offense of profiting from human trafficking when that person benefits, financially or by receiving anything of value, from participation in a venture that has engaged in any act in violation of G.S. 14-43.11, 14-43.12, or 14-43.13 knowing or in reckless disregard of the fact that the venture has engaged in such violation.

Human trafficking when the victim is an adult is a Class F felony. (G.S. 14-43.11)

Involuntary servitude when the victim is an adult is a Class F felony. (G.S. 14-43.12)

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 500 – Strengthen Human Trafficking Law [Ed. 1] (cont'd)

STATUTE

§ 14-43.15. Profiting from human trafficking.

DESCRIPTION

Subdivision (b)(1):

A person who

1. profits from human trafficking,
2. while engaging in a violation of G.S 14-43.11 or 14-43.12, and
3. the victim of the violation is a child.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

G.S. 14-43.15(a) provides that a person commits the offense of profiting from human trafficking when that person benefits, financially or by receiving anything of value, from participation in a venture that has engaged in any act in violation of G.S. 14-43.11, 14-43.12, or 14-43.13 knowing or in reckless disregard of the fact that the venture has engaged in such violation.

Human trafficking when the victim is a minor is a Class C felony. (G.S. 14-43.11)

Involuntary servitude when the victim is a minor is a Class C felony. (G.S. 14-43.12)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 500 – Strengthen Human Trafficking Law [Ed. 1] (cont'd)

STATUTE

§ 14-43.15. Profiting from human trafficking.

DESCRIPTION

Subdivision (b)(2):

A person who

1. profits from human trafficking,
2. while engaging in a violation of G.S 14-43.13, and
3. the victim of the violation is an adult.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

G.S. 14-43.15(a) provides that a person commits the offense of profiting from human trafficking when that person benefits, financially or by receiving anything of value, from participation in a venture that has engaged in any act in violation of G.S. 14-43.11, 14-43.12, or 14-43.13 knowing or in reckless disregard of the fact that the venture has engaged in such violation.

Sexual servitude when the victim is an adult is a Class D felony. (G.S. 14-43.13)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 500 – Strengthen Human Trafficking Law [Ed. 1] (cont'd)

STATUTE

§ 14-43.15. Profiting from human trafficking.

DESCRIPTION

Subdivision (b)(2):

A person who

1. profits from human trafficking,
2. while engaging in a violation of G.S 14-43.13, and
3. the victim of the violation is a child.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

G.S. 14-43.15(a) provides that a person commits the offense of profiting from human trafficking when that person benefits, financially or by receiving anything of value, from participation in a venture that has engaged in any act in violation of G.S. 14-43.11, 14-43.12, or 14-43.13 knowing or in reckless disregard of the fact that the venture has engaged in such violation.

Sexual servitude when the victim is a minor is a Class C felony. (G.S. 14-43.13)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 500 – Strengthen Human Trafficking Law [Ed. 1] (cont'd)

STATUTE

§ 14-43.16. Obstruction of investigation of human trafficking.

DESCRIPTION

A person who

1. obstructs, attempts to obstructs, or in any way interferes with or prevents
2. the enforcement of Article 10A of Chapter 14.

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.

Article 10A, Human Trafficking, of Chapter 14 defines and provides penalties for the offenses of human trafficking, involuntary servitude, sexual servitude and the unlawful sale, surrender, or purchase of a minor.

Altering, destroying or stealing evidence of criminal conduct is a Class I felony. (G.S. 14-221.1)

False reports to law enforcement agencies or officers that involve the disappearance of a child or child victim of a Class A, B1, B2, or C offense is a Class H felony. (G.S. 14-225(b))

False reports to law enforcement agencies or officers is a Class 2 misdemeanor (G.S. 14-225(a))

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1]
--

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (a):

A person who

1. commits an assault
2. with a firearm
3. upon a law enforcement officer, probation officer, or parole officer
4. while the officer is in the performance of his duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

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

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (a1):

A person who

1. commits an assault
2. with a firearm
3. upon a member of the North Carolina National Guard
4. while that member is in the performance of his duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

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

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (b):

A person who

1. commits an assault
2. with a firearm
3. upon a person who is employed at a detention facility operated under the jurisdiction of the State or a local government
4. while that employee is in the performance of his duties.

OFFENSE CLASS

CURRENT: Class E felony.

PROPOSED: Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

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

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (b):

A person who

1. commits an assault or affray
2. upon
 - a. an emergency medical technician or other emergency health care provider
 - b. a medical responder
 - c. hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital, or
 - d. a firefighter
3. while that person is discharging or attempting to discharge his official duties, and in so doing
4. inflicts serious bodily injury, or
5. uses a deadly weapon other than a firearm.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class G felony.

ANALYSIS

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

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

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (c):

A person who

1. commits an assault or affray
2. upon
 - a. an emergency medical technician or other emergency health care provider
 - b. a medical responder
 - c. hospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital, or
 - d. a firefighter
3. while that person is discharging or attempting to discharge his official duties, and in so doing
4. uses a firearm.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (a):

A person who

1. assaults
2. a law enforcement officer, probation officer, or parole officer
3. while that officer is discharging or attempting to discharge his official duties, and in so doing
4. inflicts serious bodily injury on the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

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

Assault on another person that inflicts serious bodily injury is a Class F felony (G.S. 14-32.4(a))

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (a1):

A person who

1. assaults
2. a member of the North Carolina National Guard
3. while that person is discharging or attempting to discharge his official duties, and in so doing
4. inflicts serious bodily injury on the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

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

Assault on another person that inflicts serious bodily injury is a Class F felony (G.S. 14-32.4(a))

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

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (b):

A person who

1. assaults
2. a person who is employed at a detention facility operated under the jurisdiction of the State or a local government
3. while the employee is in the performance of his duties, and in so doing
4. inflicts serious bodily injury on the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

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

Assault on another person that inflicts serious bodily injury is a Class F felony (G.S. 14-32.4(a))

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility; penalty.

DESCRIPTION

Subsection (c):

A person who

1. assaults a law enforcement officer, probation officer, or parole officer while the officer is discharging or attempting to discharge his official duties and inflicts physical injury on the officer,
2. assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of his duties and inflicts physical injury on the employee, or
3. assaults a member of the North Carolina National Guard while he is discharging or attempting to discharge his official duties and inflicts physical injury on the member.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

For purposes of G.S. 14-34.7(c) “physical injury” includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury.

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault
2. causing physical injury
3. upon emergency personnel.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

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

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

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

Assault on a law enforcement officer in the discharge or attempted discharge of official duties that inflicts physical injury is a Class I felony. (G.S. 14-34.7(c))

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont'd)

STATUTE

§ 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault
2. upon emergency personnel
3. with or through the use of any dangerous weapon or substance.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

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

Assault on another person with a deadly weapon that inflicts serious injury is a Class E felony. (G.S. 14-32)

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 520 – Emergency Worker Protection Act [Ed. 1] (cont’d)

STATUTE

§ 14-31. Maliciously assaulting in a secret manner.

DESCRIPTION

Subsection (b):

A person who

1. commits a violation of G.S. 14-31(a)
2. against an emergency worker
3. while the emergency worker is discharging or attempting to discharge his official duties.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

G.S. 14-31(a) provides that it shall be unlawful for any person, in a secret manner, to maliciously commit an assault and battery with any deadly weapon upon another by waylaying or otherwise, with intent to kill such other person, notwithstanding the person so assaulted may have been conscious of the presence of his adversary. Violation is a Class E felony.

For purposes of G.S. 14-31(b) “emergency worker” is a law enforcement officer, firefighter, emergency medical technician, or medical responder.

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 532 – Landowner Encroachment and Timber Theft Act [Ed. 1]
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STATUTE

§ 14-136. Setting fire to grass and brushlands and woodlands.

DESCRIPTION

A person who

1. intentionally
2. sets fire to any
3. grassland, brushland, or woodland, except it be his own property, or
4. in that case,
 - a. without first
 - i. giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and
 - b. without also taking care
 - i. to watch such fire while burning, and
 - ii. to extinguish it before it shall reach any lands near to or adjoining the lands so fired, and
5. all of this having been done with intent to damage the property of another.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

FINDINGS

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 548 – Strengthen Human Trafficking Laws/Studies [Ed. 1]

STATUTE

§ 14-43.11. Human trafficking.

DESCRIPTION

Subsection (b):

A person who

1. knowingly, or in reckless disregard of the consequences of the action
 - a. recruits, entices, harbors, transports, provides, or obtains
 - b. by any means
 - c. another person
 - d. with the intent that the other person be held
 - e. in involuntary servitude or sexual servitude, and
2. the victim of the offense is an adult.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class C felony.

ANALYSIS

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

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

First degree kidnapping is a Class C felony; second degree kidnapping is a Class E felony. (G.S. 14-39(b))

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 548 – Strengthen Human Trafficking Laws/Studies [Ed. 1] (cont'd)

STATUTE

§ 14-43.11. Human trafficking.

DESCRIPTION

Subsection (b):

A person who

1. knowingly, or in reckless disregard of the consequences of the action
 - a. recruits, entices, harbors, transports, provides, or obtains
 - b. by any means
 - c. another person
 - d. with the intent that the other person be held
 - e. in involuntary servitude or sexual servitude, or
2. willfully, or in reckless disregard of the consequences of the action
 - a. causes a minor
 - b. to be held
 - c. in involuntary servitude or sexual servitude
3. and the victim of the offense is a minor.

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class B1 felony.

ANALYSIS

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

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

First degree kidnapping is a Class C felony; second degree kidnapping is a Class E felony. (G.S. 14-39(b))
Abduction of a child is a Class F felony. (G.S. 14-41)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 600 – Britny’s Law: IPV Homicide [Ed.1]

STATUTE

§ 14-17. Murder in the first and second degree defined; punishment.

DESCRIPTION

A person who

1. kills
2. with malice
3. a spouse, former spouse, a person with whom the defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship with, or a person with whom the defendant shares a child in common
4. and one of the following elements is present:
 - a. the perpetrator has previously been convicted of one of the following involving the same victim:
 - i. any crime involving the violation of a domestic violence protective order;
 - ii. any crime in which assault is an element;
 - iii. communicating threats or harassing phone calls; or
 - iv. any felony listed in 15A-830 (Crime Victim’s Rights Act);
 - b. the perpetrator has previously stalked the victim; or
 - c. on more than one prior occasion engaged in an act of domestic violence upon the victim.

PROPOSED OFFENSE CLASS

Class A felony.

ANALYSIS

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

Proposed subsection (a1) provides that a murder shall be presumed a “willful, deliberate, and premeditated killing” if the murder was committed in the manner listed above.

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.

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 628 – Various Changes to the Revenue Laws [Ed. 1]
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STATUTE

§ 105-236. Penalties; situs of violations; penalty disposition.

DESCRIPTION

Subdivision (a)(7):

A person who

1. willfully attempts, or
2. any person who aids or abets any person to attempt
3. in any manner
4. to evade or defeat
5. a tax or its payment.

OFFENSE CLASS

CURRENT: Class H felony, regardless of amount.

PROPOSED: Class F felony, if violation involves less than one hundred thousand dollars (\$100,000).

ANALYSIS

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

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious 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.

Embezzlement of \$100,000 or more is a Class C felony; embezzlement of less than \$100,000 is a Class F felony. (G.S. 14-90)

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 628 – Various Changes to the Revenue Laws [Ed. 1] (cont'd)

STATUTE

§ 105-236. Penalties; situs of violations; penalty disposition.

DESCRIPTION

Subdivision (a)(7):

A person who

1. willfully attempts, or
2. any person who aids or abets any person to attempt
3. in any manner
4. to evade or defeat
5. a tax or its payment.

OFFENSE CLASS

CURRENT: Class H felony, regardless of amount.

PROPOSED: Class C felony, if violation involves one hundred thousand dollars (\$100,000) or more.

ANALYSIS

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

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

Embezzlement of \$100,000 or more is a Class C felony; embezzlement of less than \$100,000 is a Class F felony. (G.S. 14-90)

FINDINGS

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

DATE OF REVIEW: 04/07/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 628 – Various Changes to the Revenue Laws [Ed. 1] (cont'd)

STATUTE

§ 105-236. Penalties; situs of violations; penalty disposition.

DESCRIPTION

Subdivision (a)(9):

A person who

1. is required to
 - a. pay any tax,
 - b. file the return,
 - c. keep the records, or
 - d. supply the information, and
2. at the time or times required
 - a. by law, or
 - b. rules issued pursuant thereto, and
3. willfully fails to do so.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class H felony, for any second or subsequent offense.

ANALYSIS

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

FINDINGS

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

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

DATE OF REVIEW: 04/07/17

IMPACT ANALYSIS NOT REQUESTED YET