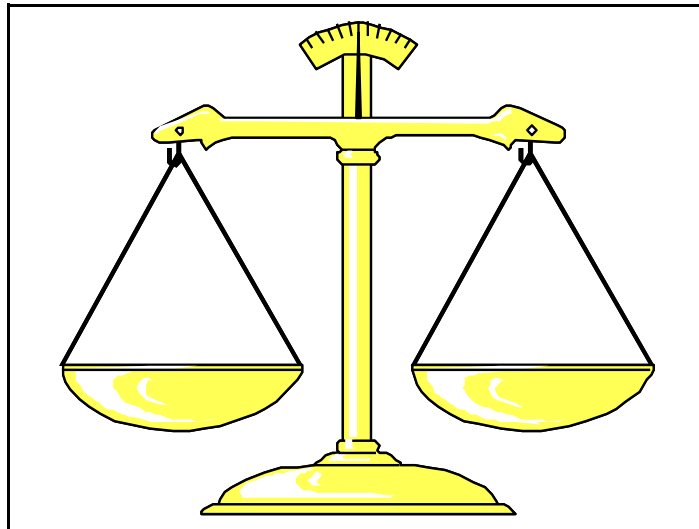


North Carolina
Sentencing and Policy Advisory Commission

Report #3 on Proposed Legislation
Pursuant to N.C.G.S. 164-43



Submitted to the 2017 Session of the
North Carolina General Assembly

May 2017

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Chairman

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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 May 3, 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 May 3, 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 #3 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
MAY 3, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 670	Protect Educational Property	G.S. 14-277.6(b)	H	Inconsistent	Would be consistent with Class F felony.	1
HB 673	DWLR/Death or Injury by Vehicle	G.S. 20-141.4(a1)	D	Inconsistent	Would be consistent with Class E felony.	3
		G.S. 20-141.4(a3)	F	Consistent		4
		G.S. 20-141.4(a4)	E	Consistent		5
		G.S. 20-141.4(a5)	D	Inconsistent	Would be consistent with Class E felony.	6
HB 698	Increase Penalty for Voter Fraud	G.S. 163-275	G	Inconsistent	Would be consistent with Class H felony.	7
HB 703	Felon W/Gun/B&E/ Increased Penalties	G.S. 14-415.1(a)	F	Consistent		9
		G.S. 14-54(a)	F	Consistent		10
		G.S. 14-54(a1)	F	Consistent		11
HB 711	Increase Hate Crime Punishment	G.S. 14-3(d)	H	Consistent		12
		G.S. 14-401.14(a)	H	Consistent		13
		G.S. 15A-1340.16E	One class higher	Inconsistent		14
HB 723	Gun Safety Act	G.S. 14-409.13(a)	I	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	15
		G.S. 14-409.61(b)	I	Consistent		16
HB 736	Provide Minor Alcohol/ Felony if Death Results	G.S. 18B-302.1(b1)	I	Inconsistent		17
HB 746	NC Constitutional Carry Act	G.S. 14-415.35(d)	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	19

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #3 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
MAY 3, 2017

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 749	Limited Identification Cards	G.S. 14-100.1(a)	G	Inconsistent	Would be consistent with Class I felony.	20
		G.S. 20-30(2)	G	Inconsistent	Would be consistent with Class I felony.	21
		G.S. 20-30(7)	G	Inconsistent	Would be consistent with Class I felony.	22
HB 750	Gaming Commission/VLTs	G.S. 18C-404(b)	5	Inconsistent	Would be consistent with Class I felony.	23
		G.S. 18C-404(c)	6	Inconsistent	Would be consistent with Class I felony.	24
		G.S. 18C-404(d)	6	Inconsistent	Would be consistent with Class I felony.	25
HB 785	Duty to Call 911/ Violation Misdemeanor	G.S. 14-202.7(a)	I	Inconsistent		26
HB 789	End of Life Options	G.S. 90-326.16(a)	Not classified	Inconsistent		28
		G.S. 90-326.16(b)	Not classified	Inconsistent		29
		G.S. 90-326.16(c)	Not classified	Inconsistent		30
HB 877	Safer Roads and Communities Act	G.S. 20-30(5)	I	Consistent		31
HB 881	Automatic Voter Registration	G.S. 163-82.20(b)(1)	I	Consistent		32
HB 918	Post Crime on Social Media/Enhanced Sentence	G.S. 15A-1340.16E(b)	Increased minimum by 24 months	Inconsistent		33

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 670 – Protect Educational Property [Ed. 2]

STATUTE

§ 14-277.6. Making a threat concerning mass violence on educational property.

DESCRIPTION

Subsection (b):

A person who

1. by any means of communication,
2. to any person or groups of persons,
3. makes a threat that an act of mass violence is going to occur
 - a. on educational property or
 - b. at a curricular or extracurricular activity sponsored by a school.

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.

Making a false report concerning mass violence on educational property is a Class H felony. (G.S. 14-277.5)
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.

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: 05/03/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 670: PROTECT EDUCATIONAL PROPERTY [Ed. 1]

PREPARED: APRIL 19, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING¹

This bill creates one new felony offense.

This bill enacts G.S. 14-277.6, Making a threat concerning mass violence on educational property. This makes it a Class H felony for a person who, by any means of communication to any person or groups of persons, makes a threat that an act of mass violence is going to occur on educational property or at a curricular or extracurricular activity sponsored by a school. The threat must be made in a manner and under circumstances that a reasonable person would believe the threat credible.

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

The proposed offense is similar to the existing offense of making a false report concerning mass violence on educational property. (G.S. 14-277.5) The proposed offense does not include the element that the person knew or had reason to know the report was false. There were 2 convictions under G.S. 14-277.5 in FY 2016.

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

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

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.

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 673 – DWLR/Death or Injury by Vehicle [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (a1) Felony Death by Vehicle:

A person who

1. unintentionally
2. causes the death of another person
3. by driving while license revoked for impaired driving under G.S. 20-28(a1) and
4. the driving while license revoked is the proximate cause of the death.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that result in an intentional killing with a partial legal excuse as Class D felonies.

The unintentional cause of the death of another person by engaging in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and the impaired driving is the proximate cause of the death is a Class D felony. (G.S. 20-141.4(a1)). Passed in 2012, the Commission was unable to review this proposed reclassification; the provision was added after the review date.

Driving while license revoked for impaired driving is a Class 1 misdemeanor. (G.S. 20-28(a1))

This new offense would also impact the offense Repeat Felony Death by Vehicle Offenders, which punishes as a Class B2 felony those persons who commit an offense under subsection (a1) (Felony Death by Vehicle) or subsection (a5) (Aggravated Felony Death by Vehicle) and have a previous conviction under subsection (a1), (a5), or G.S. 14-17 (Murder in the first and second degree) or G.S. 14-18 (Manslaughter) if the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2. (G.S. 20-141.4(a6))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class E felony. The Sentencing Commission recommends classifying offenses that result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

DATE OF REVIEW: 05/03/17

BILL CONTINUED ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 673 – DWLR/Death or Injury by Vehicle [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a3) Felony Serious Injury by Vehicle:

A person who

1. unintentionally
2. causes serious injury to another person
3. by driving while license revoked for impaired driving under G.S. 20-28(a1) and
4. the driving while license revoked is the proximate cause of the serious injury.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

The unintentional cause of serious injury to another person by engaging in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and the impaired driving is the proximate cause of the serious injury is a Class F felony. (G.S. 20-141.4(a1))

Driving while license revoked for impaired driving is a Class 1 misdemeanor. (G.S. 20-28(a1))

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: 05/03/17

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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 673 – DWLR/Death or Injury by Vehicle [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a4) Aggravated Felony Serious Injury by Vehicle:

A person who

1. unintentionally
2. causes serious injury to another person
3. by driving while license revoked for impaired driving under G.S. 20-28(a1)
4. the driving while license revoked is the proximate cause of the serious injury and
5. has a previous conviction involving impaired driving or for driving while license revoked for impaired driving under G.S. 20-28(a1) within seven years of the date of the offense.

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.

The unintentional cause of serious injury to another person by engaging in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, the impaired driving is the proximate cause of the serious injury, and the driver has a previous conviction involving impaired driving or for driving while license revoked for impaired driving under G.S. 20-28(a1) within seven years of the date of the offense is a Class E felony. (G.S. 20-141.4(a1))

Driving while license revoked for impaired driving is a Class 1 misdemeanor. (G.S. 20-28(a1))

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: 05/03/17

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 673 – DWLR/Death or Injury by Vehicle [Ed. 1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (a5) Aggravated Felony Death by Vehicle:

A person who

1. unintentionally
2. causes the death of another person
3. by driving while license revoked for impaired driving under G.S. 20-28(a1)
4. the driving while license revoked is the proximate cause of the death and
5. has a previous conviction involving impaired driving or for driving while license revoked for impaired driving under G.S. 20-28(a1) within seven years of the date of the offense.

PROPOSED OFFENSE CLASS

Class D felony. Notwithstanding the provisions of G.S. 15A-1340.17, the court shall sentence the defendant in the aggravated range of the appropriate Prior Record Level.

ANALYSIS

The Sentencing Commission recommends classifying offenses that result in an intentional killing with partial legal excuse as Class D felonies.

Unintentionally causing the death of another person by engaging in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, the impaired driving is the proximate cause of the death, and the driver has a previous conviction involving impaired driving or for driving while license revoked for impaired driving under G.S. 20-28(a1) within seven years of the date of the offense is a Class D felony. (G.S. 20-141.4(a1))

Driving while license revoked for impaired driving is a Class 1 misdemeanor. (G.S. 20-28(a1))

This new offense would also impact the offense Repeat Felony Death by Vehicle Offenders, which punishes as a Class B2 felony those persons who commit an offense under subsection (a1) (Felony Death by Vehicle) or subsection (a5) (Aggravated Felony Death by Vehicle) and have a previous conviction under subsection (a1), (a5), or G.S. G.S. 14-17 (Murder in the first and second degree) or G.S. 14-18 (Manslaughter) if the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2. (G.S. 20-141.4(a6))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission recommends classifying offenses that result in an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

DATE OF REVIEW: 05/03/17

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: HB 698 – Increase Penalty for Voter Fraud [Ed. 1]

STATUTE

§ 163-275. Certain acts declared felonies.

DESCRIPTION

A person who

1. in connection with any primary, general or special election held in North Carolina
2. does any of the acts or things declared in G.S. 163-275 to be unlawful.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class G felony.

ANALYSIS

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

To knowingly make any false affidavit or swear or affirm falsely to any matter in Article 8, Challenges, Qualifications of Voters, under Chapter 163, Elections and Election Laws is a Class I felony. (G.S. 163-90.3)
Certain acts related to absentee voting are Class I felonies. (G.S. 163-226.3)

The following is prohibited by G.S. 163-275:

1. Fraudulently causing a person’s name to be placed upon the registration books improperly
2. Giving, promising, requesting, or accepting money, property or anything of value in return for a vote
3. Election officers, etc. to knowingly make or causing false statements on any ballot or omit any legally required report
4. Swear falsely with respect to any matter pertaining to any primary or election
5. Voting at a primary or election without having voting rights restored
6. Corruptly taking the oath prescribed for voters
7. To register or vote at more than one precinct or more than one time with the intent to commit fraud or to vote illegally at any primary or election
8. For any chief judge, clerk, or copyist to make any entry or copy with intent to commit a fraud
9. To make, certify, or transmit any false returns of any primary or election or to make any alterations or destroy election ballots, etc. with the intent to commit a fraud
10. To assault any chief judge, judge of election, or other election officer while in the discharge of their duties
11. To intimidate any chief judge, judge of election or other election officer in the discharge of duties
12. For any election official to seek receive or accept money, office, or other reward or compensation, or the promise thereof, from a candidate other than provided by law
13. To falsely make or present any paper to qualify fraudulently as a voter
14. To register voters contrary to the provisions of G.S. 163-82.4
15. To falsely make the certificate provided by G.S. 163-229(b)(2)

16. To misrepresent the law to the public through mass mailing or any other means of communication where the intent and
17. To instruct or coerce a person not a citizen of the United States to register to vote or to vote.

FINDINGS

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

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

DATE OF REVIEW: 05/03/17

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: HB 703 – Felon W/ Gun/B&E/Increased Penalties [Ed. 3]

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a):

A person who

1. has been convicted of a felony
2. and purchases, owns, or has in his or her custody, care or control
3. any firearm or any weapon of mass death and destruction, as defined in G.S. 14-288.8(c).

OFFENSE CLASS

CURRENT: Class G 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 the person or from the person's dwelling as Class G felonies.

Possession of a weapon of mass death and destruction is a Class F felony. (G.S. 14-288.8(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: 05/03/17

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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 703 – Felon W/ Gun/B&E/Increased Penalties [Ed. 3] (cont'd)

STATUTE

§ 14-54. Breaking or entering buildings generally.

DESCRIPTION

Subsection (a):

A person who

1. breaks or enters
2. any building
3. with intent to commit any felony or larceny therein and
4. any person is in actual occupation of the building at the time of the commission of the crime.

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.

Breaking or entering buildings generally is a Class H felony. (G.S. 14-54)

First degree burglary is a Class D felony. (G.S. 14-51)

Second degree burglary is a Class G felony. (G.S. 14-51)

Burglary is defined by common law as “breaking and entering during the nighttime of a dwelling or sleeping apartment with intent to commit a felony therein. That the building was or was not occupied at the time affects the degree.” (State v. Mumford, 227 N.C. 132, 133) Pursuant to G.S. 14-51, first degree burglary is for offenses that occur if the building was occupied and second degree burglary is if the building was not occupied.

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: 05/03/17

BILL CONTINUED ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 703 – Felon W/ Gun/B&E/Increased Penalties [Ed. 3] (cont'd)

STATUTE

§ 14-54. Breaking or entering buildings generally.

DESCRIPTION

Subsection (a1):

A person who

1. breaks or enters
2. any building
3. with intent to terrorize or injure an occupant of the building.

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.

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: 05/03/17

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 711 – Increase Hate Crime Punishment [Ed. 1]

STATUTE

§ 14-3. Punishment of misdemeanors, infamous offense, offenses committed in secrecy and malice, or with deceit and intent to defraud or ~~with ethnic animosity~~ against certain victims.

DESCRIPTION

Subsection (d):

A person who

1. commits a Class A1 or Class 1 misdemeanor
2. because of, in whole or in substantial part, one of the following actual or perceived characteristics of the victim:
 - a. race; color; religion; age; nationality, national origin, or country of origin; disability; military or veteran status; employment status or position; socioeconomic status; political affiliation; or association with a person or group with one or more of these actual characteristics.

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 who commits a Class 2 or 3 misdemeanor because of the reasons listed in Subsection (d)(2) above is guilty of a Class A1 misdemeanor.

Current G.S. 14-3(c) increases the punishment for Class A1 or 1 misdemeanor offenses committed because of the victim's race, color, religion, nationality or country of origin to Class H.

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

FINDINGS

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

DATE OF REVIEW: 05/03/17

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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 711 – Increase Hate Crime Punishment [Ed. 1] (cont'd)

STATUTE

§ 14-401.14. ~~Ethnic intimidation;~~ Intimidation of certain victims; teaching any technique to be used for ~~ethnic intimidation;~~ intimidation of certain victims.

DESCRIPTION

Subsection (a):

A person who

1. assaults another person or
2. damages or defaces the property of another person
3. because of, in whole or in substantial part, one of the following actual or perceived characteristics of the victim:
 - a. race; color; religion; age; nationality, national origin, or country or origin; disability; military or veteran status; employment status or position; socioeconomic status; political affiliation; or association with a person or group with one or more of these actual characteristics.

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.

Current G.S. 14-3(a) provides that assaulting, damaging or defacing the property of another person, or threatening to do such an act because of the victim's race, color, religion, nationality or country of origin is 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.

DATE OF REVIEW: 05/03/17

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 711 – Increase Hate Crime Punishment [Ed. 1] (cont’d)
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STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a felony against certain victims.

DESCRIPTION

Subsection (a):

A person who

1. is convicted of a felony and
2. the offense was committed because of, in whole or in substantial part, one of the following actual or perceived characteristics of the victim:
 - a. race; color; religion; age; nationality, national origin, or country or origin; disability; military or veteran status; employment status or position; socioeconomic status; political affiliation; or association with a person or group with one or more of these actual characteristics

PUNISHMENT RANGE

CURRENT: The class of the felony offense for which the person was convicted.

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

ANALYSIS

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

FINDINGS

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

DATE OF REVIEW: 05/03/17

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 723 – Gun Safety Act [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (a):

A person who

1. is an owner of a firearm, as defined in G.S. 14-408.1(a) and
2. fails to report the loss or theft of the firearm within 48 hours after the discovery of the loss or theft to either
 - a. the local law enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred or
 - b. the State Bureau of Investigation.

PROPOSED OFFENSE CLASS

Class I felony, second and subsequent offenses.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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: 05/03/17

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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 723 – Gun Safety Act [Ed. 1] (cont'd)

STATUTE

§ 14-409.61. Large-capacity magazines prohibited; penalties; exceptions.

DESCRIPTION

Subsection (b):

A person who

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

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

A large-capacity magazine includes all of the following

1. a fixed or detachable magazine box, drum, feed strip, or similar device capable of accepting or that is designed to be readily converted to accept more than 15 rounds of ammunition
2. a fixed or detachable magazine that is capable of accepting more than eight shotgun shells
3. a detachable magazine, tube, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

It is a Class 2 misdemeanor for a person to sell, transfer or possess a large-capacity magazine; it is a Class 1 misdemeanor upon the second and subsequent offense. (G.S. 14-409.61(a))

It is an aggravating factor to be armed with or use a deadly weapon at the time of the crime. (G.S. 15A-1340.16(d)(10))

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: 05/03/17

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 736 – Provide Minor Alcohol/Felony if Death Results [Ed. 2]
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STATUTE

§ 18B-302.1. Penalties for certain offenses related to underage persons.

DESCRIPTION

Subsection (b1):

A person who

1. violates one of the following provisions:
 - a. G.S. 18B-302(a) (Sale to underage persons)
 - b. G.S. 18B-302(a1) (Give to underage persons)
 - c. G.S. 18B-302(c)(2) (Person over lawful age aids and abets another in the sale/give/purchase by underage person)
2. knew or should have known at the time of the act that the underage person was underage and
3. the violation is the proximate cause of the death of a person.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

There are no Homicide Offense Classification Criteria for Class I.

Under G.S. 18B-302(a), (a1), and (b), it is a Class A1 misdemeanor to sell, give, purchase, possess or consume malt beverages, unfortified wine, fortified wine, spirituous liquor, or mixed beverages to or by underage persons.

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.

There are no Homicide Offense Classification Criteria for Class I.

DATE OF REVIEW: 05/03/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 736: PROVIDE MINOR ALCOHOL/FELONY IF DEATH RESULTS [Ed. 1]

PREPARED: APRIL 27, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING²

This bill adds one new felony offense.

This bill amends G.S. 18B-302.1, Penalties for certain offenses related to underage persons, by adding subsection (b1) which makes it a Class I felony if a person violates G.S. 18B-302(a), (a1), or (c)(2) and the violation is the proximate cause of the death of a person.

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, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 9 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
9	1	2	2	2	2
20	2	4	4	4	4

Currently, any violation of G.S. 18B-302(a) or (a1) is a Class 1 misdemeanor under G.S. 18B-302.1(a), and any violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor under G.S. 18B-302.1(b). There were 44 convictions under G.S. 18B-302.1(a) and 10 convictions under G.S. 18B-302.1(b) in FY 2016.

Some of this conduct is currently be punished as involuntary manslaughter, a Class F felony under G.S. 14-18. There were 48 convictions for involuntary manslaughter in FY 2016. It is possible that some violations of the proposed bill would continue to be prosecuted for the more serious offense of involuntary manslaughter.

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

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 746 – NC Constitutional Carry Act [Ed. 1]

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 Sentencing Commission reviewed an identical provision in February 2017 in HB 69 and in April 2017 in HB 201 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: 05/03/17

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 749 – Limited Identification Cards [Ed.1]

STATUTE

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

DESCRIPTION

Subsection (a)

A person who

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

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

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

The Sentencing Commission reviewed an identical provision in February 2017 in HB 63. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony and noted that it would be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 05/03/17

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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 749 – Limited Identification Cards [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (2):

A person who

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

OFFENSE CLASS

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

PROPOSED: Class G felony.

ANALYSIS

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

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

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

The Sentencing Commission reviewed a substantially similar provision in February 2017 in HB 63. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony and noted that it would be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

DATE OF REVIEW: 05/03/17

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 749 – Limited Identification Cards [Ed.1] (cont'd)

STATUTE

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

DESCRIPTION

Subsection (7):

A person who

1. sells or offers for sale,
2. any reproduction or facsimile or simulation of,
3. a driver's license, learner's permit, limited identification card, or special identification card.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class G felony.

ANALYSIS

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

G.S. 20-30(7) further provides that this subdivision does not apply to agents or employees of the Division of Motor Vehicles while acting in the course and scope of their employment.

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

The Sentencing Commission reviewed a substantially similar provision in February 2017 in HB 63. The Commission found the provision to be inconsistent with the Offense Classification Criteria for a Class G felony and noted that it would be consistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 05/03/17

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 750 – Gaming Commission/VLTs [Ed.1]

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (b):

A person who

1. with intent to manipulate the
 - a. outcome,
 - b. payoff, or
 - c. operation of
2. a video lottery terminal, and
3. does so
4. by physical tampering or other means.

PROPOSED OFFENSE CLASS

Class 5 felony.

ANALYSIS

Felony offense classes are designated by letters, not numbers.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes.

Tampering with a video lottery terminal with intent to interfere with the proper operation of such is proposed as a Class 1 misdemeanor in subsection (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 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: 05/03/17

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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 750 – Gaming Commission/VLTs [Ed.1] (cont'd)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (c):

A person who

1. owns a machine, and
2. a. falsely reports, or
b. fails to report
3. the amount due
4. [as] required by the N.C. State Lottery Commission.

PROPOSED OFFENSE CLASS

Class 6 felony.

ANALYSIS

Felony offense classes are designated by letters, not numbers.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes. Neither “Commission” nor “machine” are defined in the proposed Article.

An owner found guilty of this subsection is also subject to termination of his or her license by the Commission.

Tampering with a video lottery terminal with intent to interfere with the proper operation of such is proposed as a Class 1 misdemeanor in subsection (a).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 05/03/17

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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 750 – Gaming Commission/VLTs [Ed.1] (cont'd)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (d):

A person who

1. as a video lottery retailer or operator,
2. pays a prize
3. to any person
4. in an amount
5. less than the specified prize won.

PROPOSED OFFENSE CLASS

Class 6 felony.

ANALYSIS

Felony offense classes are designated by letters, not numbers.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes.

An “operator” is defined as an individual, partnership, other business entity, etc. that owns and/or services a video lottery terminal for which a video lottery terminal permit has been issued, and places that terminal for public use in the State. (G.S. 18C-200(6)).

A “video lottery retailer” is defined as an establishment under contract with the Commission to place video lottery terminals on premises authorized by the contract. (G.S. 18C-200(8)).

Tampering with a video lottery terminal with intent to interfere with the proper operation of such is proposed as a Class 1 misdemeanor in subsection (a).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 05/03/17

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 785 – Duty to Call 911/Violation Misdemeanor [Ed.1]

STATUTE

§ G.S. 14-202.7. Duty to summon emergency assistance; liability limitation.

DESCRIPTION

Subsection (a):

A person who

1. knows or has reason to know
2. that another is in need of emergency assistance, and
3. with willfulness or gross negligence,
4. fails to
 - a. dial 911, or use another means to
 - b. summon police, fire department, or ambulance to the scene, and
5. the person in need of assistance dies as a result of the failure.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

There are no Homicide Offense Classification Criteria for Class I.

Under G.S. 14-202.7(a) is a Class A1 misdemeanor for any person who knows or has reason to know that another is in need of emergency assistance to fail to dial 911 to summon police, fire department, or ambulance to secure the scene or to fail to use another means to summon emergency assistance. A person is not required to summon emergency assistance if doing so would place the person in danger or emergency assistance is being summoned by others.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

There are no Homicide Offense Classification Criteria for Class I.

DATE OF REVIEW: 05/03/17

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 785: DUTY TO CALL 911/VIOLATION MISDEMEANOR [Ed. 1]

PREPARED: APRIL 20, 2017

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING³

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

This bill enacts G.S. 14-202.7, Duty to summon emergency assistance; liability limitation. This statute requires any person who knows or has reason to know that another is in need of emergency assistance to dial 911 to summon police, fire department, or ambulance to the scene or use another means to summon emergency assistance. A person is not required to summon emergency assistance as provided in this section if doing so would place the person in danger or emergency assistance is being summoned by others. Failure to dial 911 under these circumstances is a Class A1 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 this new offense. In FY 2016, 35% of Class A1 misdemeanor convictions resulted in active sentences, with an average sentence length of 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 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.

This bill also makes it a Class I felony if the failure to dial 911 is willful or grossly negligent and the person in need of emergency assistance dies as a result of the failure to dial 911.

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, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 9 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
9	1	2	2	2	2
20	2	4	4	4	4

Effective December 1, 2017.

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

³ A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 789 – End of Life Option Act [Ed.1]

STATUTE

§ 90-326.16. Felonious activities.

DESCRIPTION

Subsection (a):

A person who

1. with the intent or effect of causing, interfering with, or preventing an individual's death against his wishes,
 - a. knowingly alters or forges a request for an aid-in-dying drug [in order] to hasten an individual's death without that individual's authorization,
 - b. conceals or destroys a withdrawal or rescission of a request for an aid-in-dying drug,
 - c. destroys or conceals an individual's written request for aid-in-dying drug, or
 - d. conceals or destroys an individual's prescribed aid-in-dying drug.

PROPOSED OFFENSE CLASS

No proposed class.

ANALYSIS

G.S. 90-326.16(a) provides that these actions are punishable as a felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 05/03/17

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 789 – End of Life Option Act [Ed.1] (cont'd)

STATUTE

§ 90-326.16. Felonious activities.

DESCRIPTION

Subsection (b):

A person who

1. knowingly coerces or exerts undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his life, or
2. knowingly destroys a withdrawal or rescission of a request, or
3. administers an aid-in-dying drug to an individual without his or her knowledge or consent.

PROPOSED OFFENSE CLASS

No proposed class.

ANALYSIS

G.S. 90-326.16(b) provides that these actions are punishable as a felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 05/03/17

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 789 – End of Life Option Act [Ed.1] (cont'd)

STATUTE

§ 90-326.16. Felonious activities.

DESCRIPTION

Subsection (c):

A person who

1. knowingly coerces or exerts undue influence to
2. interfere with an individual's expressed desire to hasten his own death by ingestion of a prescribed aid-in-dying drug.

PROPOSED OFFENSE CLASS

No proposed class.

ANALYSIS

G.S. 90-326.16(c) provides that these actions are punishable as a felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 05/03/17

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: HB 877 – Safer Roads and Communities Act [Ed. 1]

STATUTE

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

DESCRIPTION

Subsection (5):

A person who

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

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class I felony.

ANALYSIS

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

Making any false affidavits, or knowingly swearing or falsely affirming any matter or thing required by the Uniform Driver’s License Act (Article 2 of Chapter 20) to be sworn or affirmed is a Class I felony. (G.S. 20-31)

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: 05/03/17

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 881 – Automatic Voter Registration [Ed.1]
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STATUTE

§ 163-82.20. Voter registration at other public ~~agencies~~ agencies; automatic voter registration.

DESCRIPTION

Subdivision (b)(1):

A person who

1. is not a citizen of the United States,
2. willfully and knowingly,
3. with fraudulent intent,
4. gives false information
5. on an application to register to vote.

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.

Falsely or fraudulently declaring a religious objection to a photograph for voter registration purposes is a Class I felony. (G.S. 163-82.7A)

Knowingly swearing falsely with respect to any matter pertaining to any primary or election is a Class I felony. (G.S. 163-275(4))

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: 05/03/17

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 918 – Post Crime On Social Media/Enhanced Sentence [Ed.1]
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STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant is convicted of a violent felony and the defendant intentionally posts the crime on the Internet or other similar communications media.

DESCRIPTION

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

1. is convicted of a violent felony, and
2. intentionally posted a clip depicting the commission of the felony on the Internet.

PUNISHMENT RANGE

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

PROPOSED: Increase the minimum term of imprisonment to which the person is sentenced for that felony by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months.

ANALYSIS

Internet is defined in G.S. 15A-1340.16E(a)(1) as social media and other similar applications or communications media.

A violent felony is defined in G.S. 15A-1340.16E(a)(2) as any Class A, B1, B2, C, D, or E felony.

FINDINGS

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

DATE OF REVIEW: 05/03/17

IMPACT ANALYSIS NOT REQUESTED YET