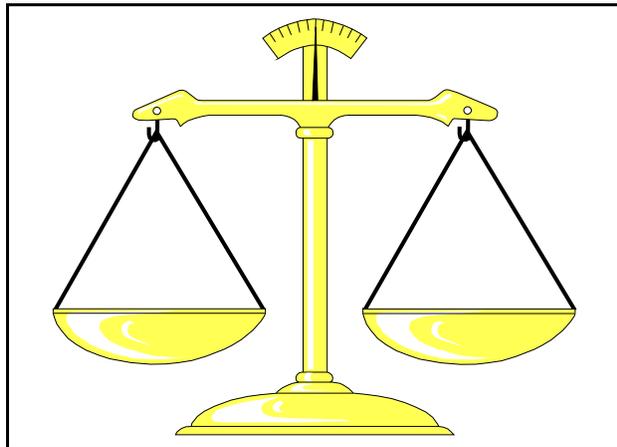


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2006 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2006***

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

This report by the Sentencing Commission includes all bills introduced or amended through June 6, 2006. 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, 2006.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on June 9, 2006.

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 a 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 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.

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 from 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.

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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 1048 - GOVERNOR'S DWI TASK FORCE RECS. [PCS]

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 causes the death of another person,
2. was engaged in the offense of impaired driving, and
3. the commission of the offense (impaired driving) is the proximate cause of the death.

OFFENSE CLASS

CURRENT: Class G 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 did not use the criteria in classifying the homicide offenses.

G.S. 14-17, Second degree murder, is a Class B2 felony.

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

(See also SB 61.)

FINDINGS

Bill is **consistent** with 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 homicide offenses.

DATE PREPARED: 6/8/06

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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 1048 - GOVERNOR'S DWI TASK FORCE RECS. [PCS] (cont.)

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 causes the death of another person,
2. was engaged in the offense of impaired driving,
3. the commission of the offense (impaired driving) is the proximate cause of the death, and
4. the person has a previous conviction involving impaired driving within seven years of the date of the offense.

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.

The Sentencing Commission did not use the criteria in classifying the homicide offenses.

G.S. 14-17, Second degree murder, is a Class B2 felony.

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

FINDINGS

Bill is **consistent** with 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 homicide offenses.

DATE PREPARED: 6/8/06

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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 1048 - GOVERNOR'S DWI TASK FORCE RECS. [PCS] (cont.)

STATUTE

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

DESCRIPTION

Subsection (a6) Repeat Felony Death by Vehicle Offender:

A person who

1. commits an offense under subsection (a1) (Felony Death by Vehicle) or subsection (a5) (Aggravated Felony Death by Vehicle), and
2. has a previous conviction under subsection (a1) or subsection (a5).

PROPOSED OFFENSE CLASS

Subject to the same sentence as if the person had been convicted of second degree murder. (Class B2 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 did not use the criteria in classifying the homicide offenses.

G.S. 14-17, Second degree murder, is a Class B2 felony.

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

FINDINGS

Bill is **consistent** with 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 homicide offenses.

DATE PREPARED: 6/8/06

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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 1048 - GOVERNOR'S DWI TASK FORCE RECS. [PCS] (cont.)

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 causes serious injury to another person,
2. was engaged in the offense of impaired driving, and
3. the commission of the offense (impaired driving) 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 as Class F felonies.

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

FINDINGS



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



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

DATE PREPARED: 6/8/06

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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 1048 - GOVERNOR'S DWI TASK FORCE RECS. [PCS] (cont.)

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 causes serious injury to another person,
2. was engaged in the offense of impaired driving,
3. the commission of the offense (impaired driving) is the proximate cause of the serious injury, and
4. the person has a previous conviction involving impaired driving 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.

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

FINDINGS



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



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

DATE PREPARED: 6/8/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1048 - GOVERNOR'S DWI TASK FORCE RECOMMENDATIONS (PCS)

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1843-REVISE LEGISLATIVE ETHICS ACT -1 [v.3]

STATUTE

§ 120-286. Bribery, etc.

DESCRIPTION

Subsection (a):

1. (A) A person who
 - (1) offers or gives
 - (2) to a legislator, a member of a legislator's immediate household, or a business with which the legislator is associated, or
- (B) A legislator who solicits or receives
2. anything of monetary value, including a gift, favor, service, or promise of future employment,
3. based on any understanding that the legislator's vote, official actions or judgment would be influenced by it or a reasonable inference that it would be influenced by it.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to G.S. 120-86(a), Bribery, etc., which is repealed by this bill.

G.S. 14-217, Bribery of officials, and G.S. 14-218, Offering bribes, are Class F felonies.

(See also SB 1694, SB 1976.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1843-REVISE LEGISLATIVE ETHICS ACT -1 [v.3] (cont.)

STATUTE

§ 120-286. Bribery, etc.

DESCRIPTION

Subsection (b):

1. The business associate, client, customer, or employer of a legislator, or the agent of that person,
2. directly or indirectly threatens that legislator economically
3. with the intent to influence the legislator in the discharge of his or her duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is similar to G.S. 120-86(b), Bribery, etc., which is repealed by this bill.

G.S. 14-217, Bribery of officials, and G.S. 14-218, Offering bribes, are Class F felonies.

(See also SB 1976.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1843-REVISE LEGISLATIVE ETHICS ACT -1 [v.3] (cont.)

STATUTE

§ 120-286. Bribery, etc.

DESCRIPTION

Subsection (c):

A person who

1. directly or indirectly threatens economically another person
2. in order to compel the threatened person to attempt to influence a legislator in the discharge of his or her duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to G.S. 120-86(c), Bribery, etc., which is repealed by this bill.

G.S. 14-217, Bribery of officials, and G.S. 14-218, Offering bribes, are Class F felonies.

(See also SB 1976.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1843-REVISE LEGISLATIVE ETHICS ACT-1 [v.3] (cont.)

STATUTE

§ 120-321. Penalty for false or misleading information.

DESCRIPTION

A candidate for specified offices, an elected legislator, or an appointed legislator who

1. provides false or misleading information on a statement of economic interest
2. knowing that the information is false or misleading.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 14-209, Perjury, is a Class F felony.

(See also SB 1694, SB 1976.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1843 - REVISE LEGISLATIVE ETHICS ACT -1

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1844-EXECUTIVE BRANCH ETHICS ACT-1 [v.3]

STATUTE

§ 138A-41. Penalty for false or misleading information.

DESCRIPTION

A public servant subject to Chapter 138A who

1. provides false or misleading information on a statement of economic interest
2. knowing that the information is false or misleading.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

G.S. 14-209, Perjury, is a Class F felony.

FINDINGS



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



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

DATE PREPARED: 6/6/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1844 - EXECUTIVE BRANCH ETHICS ACT -1

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates a new chapter in the General Statutes, Chapter 138A. Executive Branch Ethics Act.

§ 138A-25. Investigations by the Commission.

Subsection (h) of this statute allows the State Ethics Commission to hold hearings and receive oral evidence under oath or affirmation. Willfully making a statement that is false and material while under oath is perjury. Perjury is a Class F felony under G.S. 14-209. In FY 2004/05, there were seven convictions under G.S. 14-209.

It is not known how many additional perjury convictions may occur as a result of this proposed bill. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

§ 138A-35. Contents of statement.

This statute requires that certain public servants complete a statement of economic interest on a form prescribed by the State Ethics Commission and sworn to by the public servant. Willfully making a statement that is false and material while under oath is perjury. Perjury is a Class F felony under G.S. 14-209. In FY 2004/05, there were seven convictions under G.S. 14-209.

It is not known how many additional perjury convictions may occur as a result of this proposed bill. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

§ 138A-40. Concealing or failing to disclose material information.

This statute makes it a Class 2 misdemeanor for a public servant to knowingly conceal or fail to disclose information that is required to be disclosed on a statement of economic interest.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 16% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 11.8 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

§ 138A-41. Penalty for false or misleading information.

This statute makes it a Class H felony for a public servant to knowingly provide false or misleading information on a statement of economic interest. The assumption is that this offense would cover statements that are not material (perjury covers material statements).

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second 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 1896 - SEX OFFENDER REGISTRATION CHANGES [v.2]

STATUTE

§ 14-208.16. Residential and work restrictions.

DESCRIPTION

A person who

1. is required to register under Part 2 or Part 3 of Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs)
2. knowingly resides or works
3. within 1,000 feet of the property on which any public school, private or parochial school, licensed day care center, any other child care facility, public swimming pool, or private swimming pool is located.

Part 2, Sex Offender and Public Protection Registration Program - A person with a reportable conviction.
Part 3, Sexually Violent Predator Registration Program - A person classified as a sexually violent predator, a person who is a recidivist, or a person who is convicted of an aggravated offense.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 6/6/06

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1896 - SEX OFFENDER REGISTRATION CHANGES

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1

Section 1 adds statutory rape or sexual offense of person who is 13, 14, or 15 years old (G.S. 14-27.7A) to the list of “Sexually violent offenses” for which an offender must register on the sex offender registry. In FY 2004/05, there were 46 convictions under G.S. 14-27.7A. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2004/05, there were 147 convictions under G.S. 14-208.11.

It is not known how many of these additional offenders will fail to comply with their registration requirements. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTIONS 2, 3, 4, 6, 7, and 8

Sections 2, 3, 4, 6, 7, and 8 of the draft bill add additional restrictions to sex offender registration that may make compliance with registration requirements more difficult. It is not known how many additional registration violations might occur as a result of each of the proposed amendments.

Under current law, an offender convicted of a reportable sex offense is required to maintain a registration on the sex offender registry for 10 years. If they are classified as a sexually violent predator, they must maintain registration for life. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2004/05, there were 147 convictions under G.S. 14-208.11.

It is not known how many additional registration violations might occur as a result of each of these proposed amendments. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 10

Section 10 amends G.S. 14-208.12A to allow the District Attorney or the Attorney General to petition the court not to terminate the registration requirement at the end of ten years and to require the person to continue to maintain registration for an additional ten years if they failed to comply with the requirements during the first ten year period. If the court finds willful failure to comply, it may continue the registration requirements for an additional ten years.

It is not known how many additional registration violations might occur as a result of this proposed change.

If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 11

Section 11 creates a new Class F felony offense (G.S. 14-208.16) that would prohibit a person who is required to register from knowingly residing or working within 1,000 feet of property on which any public school, private or parochial school, licensed day care center, any other child care facility, public swimming pool, or private swimming pool is located.

Since the proposed draft bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 12

Section 12 amends G.S. 14-27.1(5) to expand the definition of “sexual contact” to include “a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.” “Sexual contact” is a criminal offense under G.S. 14-27.5A (Sexual battery). Violation is a Class A1 misdemeanor.

There were 114 convictions under G.S. 14-27.5A during FY 2004/05. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2004/05, 25% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 53.8 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions resulting from the proposed broadening of this statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Any new offenders convicted as a result of the proposed broadening of G.S. 14-27.5A would be required to register on the sex offender registry. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2004/05, there were 147 convictions under G.S. 14-208.11. It is not known how many additional registration violations might occur as a result of this proposed change. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second 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 1904 - SEX OFFENDER/CANNOT GO ONTO SCHOOL GDS.

STATUTE

§ 14-321.2. Unlawful for certain registered offenders to be on educational property except in certain circumstances.

DESCRIPTION

A person who

1. is required to register under Part 3 (Sexually Violent Predator Registration Program), or is required to register under Part 2 (Sex Offender and Public Protection Registration Program) and has committed an offense involving the physical, mental, or sexual abuse of a minor
2. knowingly is on educational property or within 500 feet of a school
3. while minors are present in the school or on the educational property.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 6/6/06

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1903 - SEX OFFENDER/CANNOT GO ONTO SCHOOL GROUNDS

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed draft creates a new Class F felony offense for certain registered sex offenders to be at or near schools or educational property. According to Department of Justice statistics, there were a total of 9,771 registered sex offenders in North Carolina as of December 31, 2005.

Since the proposed draft creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second 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 1921 - JESSICA LUNSFORD ACT FOR NC

STATUTE

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

DESCRIPTION

Subsection (7):

A person who

1. is required to register under Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs) and
2. fails to report in person to the sheriff's office as required.

Subsection (8):

A person who

1. is required to register under Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs) and
2. reports his or her intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff or the department in the manner required.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

Currently, violations of G.S. 14-208.11 are Class F felonies.

(See also SB 1204.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1921 - JESSICA LUNSFORD ACT FOR NC (cont.)

STATUTE

§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.

DESCRIPTION

A person who

1. has reason to believe that an offender required to register under Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs) is not complying, or has not complied with the requirements of that Article, and
2. with the intent to assist the offender in eluding a law enforcement agency that is seeking to find the offender to question the offender about, or to arrest the offender for his or her noncompliance with the requirements, and
3. does any of the following:
 - (a) Withholds information from, or does not notify, the law enforcement agency about the offender's noncompliance with the requirements of this Article and, if known, the whereabouts of the offender.
 - (b) Harbors, or attempts to harbor, or assists another person in harboring, or attempting to harbor, the offender.
 - (c) Conceals, or attempts to conceal, or assist another person in concealing, or attempting to conceal, the offender.
 - (d) Provides information to the law enforcement agency regarding the offender that the person knows to be false information.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Under G.S. 14-2.5, attempts are punishable under the next lower classification as the offense which the offender attempted to commit.

(See also SB 1204.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1921 - JESSICA LUNSFORD ACT FOR NC (cont.)

STATUTE

§ 14-208.24A. Sexually violent predator prohibited from working or volunteering at any place where children regularly congregate.

DESCRIPTION

A person who

1. is required to register under Part 3 (Sexually Violent Predator Registration Program) because he or she is classified as a sexually violent predator, is a recidivist, or is convicted of an aggravated offense
2. works, for compensation or as a volunteer,
3. at any business, school, day care center, park, playground, or other place where children regularly congregate.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

(See also SB 1204.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1921 - JESSICA LUNSFORD ACT FOR NC (cont.)

STATUTE

§ 14-202.5. Lewd or lascivious molestation.

DESCRIPTION

A person who

1. is 18 years of age or older
2. (a) intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them of a person less than 12 years of age, or
(b) forces or entices a person under 12 years of age to intentionally touch in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them of the perpetrator.

PROPOSED OFFENSE CLASS

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.

G.S. 14-27.2, First degree rape, is a Class B1 felony.

G.S. 14-27.4, First degree sexual offense, is a Class B1 felony.

G.S. 14-202.1, Taking indecent liberties with children, is a Class F felony.

G.S. 14-202.4(a), Taking indecent liberties with a student, is a Class I felony.

G.S. 14-27.5A, Sexual battery, is a Class A1 misdemeanor.

G.S. 14-33(c)(3), Assault on a child under 12 is a Class A1 misdemeanor.

FINDINGS



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



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

A Class B1 felony tends to result in serious debilitating long-term personal injury. This offense would be consistent with a Class F felony. The Sentencing Commission classified offense which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE PREPARED: 6/6/06

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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 1921 - JESSICA LUNSFORD ACT FOR NC (cont.)

STATUTE

§ 14-202.5. Lewd or lascivious molestation.

DESCRIPTION

A person who

1. is 18 years of age or older
2. (a) intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them of a person less than 12 years of age, or
(b) forces or entices a person under 12 years of age to intentionally touch in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them of the perpetrator.

PUNISHMENT RANGE

CURRENT (if applicable): Punished according to the class of the offense and the offender's prior record level.

PROPOSED: The offense is punishable by either:

- (a) life imprisonment without parole; or
- (b) a split sentence that is a minimum term of 25 years of active punishment and a maximum term of life imprisonment of active punishment, followed by post-release supervision with electronic monitoring for the duration of the defendant's natural life.

ANALYSIS

FINDINGS

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

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

DATE PREPARED: 6/6/06

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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 1921 - JESSICA LUNSFORD ACT FOR NC (cont.)

STATUTE

§ 14-259A. Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision, or other types of release.

DESCRIPTION

A person who

1. alters, tampers with, damages, or destroys
2. any electronic monitoring equipment used to monitor a person who has been placed on probation, house arrest, post-release supervision, parole, study release, or work release.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

(See also SB 1204.)

FINDINGS



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



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

DATE PREPARED: 6/6/06

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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 1921 - JESSICA LUNSFORD ACT FOR NC (cont.)

STATUTE

15A-1368.2. Post-release supervision eligibility and procedure.

DESCRIPTION

A post-release supervisee

1. who was convicted of lewd and lascivious molestation under G.S. 14-202.5 and
2. was sentenced to a split sentence.

PUNISHMENT RANGE

CURRENT (if applicable): Offenders who are convicted of a Class B1 through E offense for which registration is required under Article 27A of Chapter 14 (Sex Offender and Public Protection Registration Programs) are supervised for five years.

PROPOSED: Supervised for the duration of the person’s natural life.

ANALYSIS

An amendment to G.S. 15A-1368.4, Conditions of post-release supervision, would require electronic monitoring for the duration of that person’s natural life.

FINDINGS

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

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

DATE PREPARED: 6/6/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1921 - JESSICA LUNSFORD ACT FOR NC

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 1

Section 1 adds Statutory rape or sexual offense of person who is 13, 14, or 15 years old (G.S. 14-27.7A) and Lewd or lascivious molestation (G.S. 14-202.5; *see* Section 14) to the list of “Sexually violent offenses” for which an offender must register on the sex offender registry. In FY 2004/05, there were 46 convictions under G.S. 14-27.7A. Since Lewd or lascivious molestation is a new offense created in Section 14 of the proposed bill, it is not known how many convictions there might be for this offense (*see* analysis for Section 14).

Under current law, an offender convicted of a sexually violent offense is required to maintain a registration on the sex offender registry for ten years. If they are classified as a sexually violent predator, a recidivist, or convicted of an aggravated offense, they must maintain a registration for life. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2004/05, there were 147 convictions under G.S. 14-208.11.

This section would require more offenders to maintain a registration. It is not known how many of these additional offenders will fail to comply with their registration requirements. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In addition, under Section 4 of the proposed bill, the time period for maintaining registration on the sex offender registry would be expanded from ten years to life with a minimum of at least thirty years. It is not known how many additional registration violations might occur as a result of increasing the registration period (*see* analysis for Section 4 under Section 7).

SECTIONS 3-6

These sections amend G.S. 14-208.6A, 14-208.6B, 14-208.7, 14-208.9, and 14-208.9A to make the registration requirements stricter by requiring the offender to comply with them in person (currently they can comply with some of the requirements by mail), within 48 hours (currently 10 days), and every six months (currently annually). Section 4 expands the time for maintaining registration from ten years to life with a minimum of at least thirty years. (Under Section 9 of the bill, termination would no longer be automatic.) Section 5 changes the change of address reporting requirement to occur at the time the offender intends to move to another State and if he or she later decides to remain in this State (currently the requirement occurs when they actually move). *See* Section 7 for analysis regarding additional violations that might occur as a result of these proposed amendments.

SECTION 7

Section 7 amends Failure to register (G.S. 14-208.11) to include the changes made in Sections 3-6. The proposed changes in Sections 3-6 add additional restrictions to sex offender registration that may make compliance with registration requirements more difficult, including an expansion in the time period for maintaining registration on the sex offender registry. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2004/05, there were 147 convictions under G.S. 14-208.11.

It is not known how many additional registration violations might occur as a result of these proposed changes. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 8

Section 8 creates a new Class H felony offense, Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances. (G.S. 14-208.11A) Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be sentenced under this section. In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 9

Section 9 allows the offender to petition the superior court to terminate the registration requirement after thirty years. It is not known how many sex offenders will meet the conditions and have their registration requirement terminated after thirty years, nor is it known how many will be continued and for how long. Offenders who continue to be required to register may subsequently violate G.S. 14-208.11, Failure to comply with registration requirements. (*See* Section 7.)

SECTION 13

Section 13 creates a new felony offense, Sexually violent predator prohibited from working or volunteering at any place where children regularly congregate. (G.S. 14-208.24A) Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 14

Section 14 creates a new felony offense, Lewd or lascivious molestation. (G.S. 14-202.5) Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate

the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

However, the conduct covered under this proposed offense may be currently covered under G.S. 14-202.1, Indecent Liberties with Children, which is a Class F felony, or under G.S. 14-202.4(a), Indecent Liberties with Student, which is a Class I felony. It is not known how many of the current convictions under G.S. 14-202.1 and G.S. 14-202.4(a) would meet the age restrictions and other elements of the proposed offense. In FY 2004/05, there were 612 convictions for Indecent Liberties with Children (G.S. 14-202.1) and 4 convictions for Indecent Liberties with Student (G.S. 14-202.4(a)). Of these 616 convictions, 586 were for offenders who were 18 or older at the time of the offense. (In North Carolina, a person may be convicted of a criminal offense beginning at age 16.) The age of the victim is not known. (*See attached impact projection for percentage-based scenarios.*)

In addition, the conduct covered under this proposed bill may be currently covered under G.S. 14-27.5A, Sexual Battery, and G.S. 14-33(c)(3), Assault on a Child Under 12. In FY 2004/05, there were 114 convictions under G.S. 14-27.5A and 197 convictions under G.S. 14-33(c)(3), both of which are Class A1 misdemeanor offenses. It is not known how many of these convictions would fit the elements of the proposed offense. Due to their short sentence lengths and low rate of active punishments imposed, convictions for misdemeanor offenses typically do not have a significant impact on the prison system. However, if any of the convictions under G.S. 14-27.5A or G.S. 14-33(c)(3) would become Class B1 convictions under the proposed bill, it would result in both immediate and long-term impact on the prison system due to the required Active sentence and the minimum sentence length of 25 years. Each conviction would result in the need for one additional prison bed immediately and for a minimum of 25 years. The build-up of these convictions over the years would result in substantial long-term impact.

Scenarios: These scenarios assume that a specified percentage of the 586 offenders age 18 or older who were convicted of Indecent Liberties with Children or Indecent Liberties with Student would meet the elements of the proposed offense. These offenders would then be convicted of a Class B1 felony and sentenced to a minimum of 25 years.

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS		
	Scenario A: 10%	Scenario B: 25%	Scenario C: 50%
2007/08	15	43	78
2008/09	47	117	254
2009/10	107	254	528
2010/11	167	394	801
2011/12	223	537	1,088
2012/13	279	676	1,375
2013/14	336	823	1,670
2014/15	397	972	1,968
2015/16	464	1,123	2,277
2016/17	521	1,274	2,589

NOTES:

1. Assumes effective for crimes committed on or after 12/1/2006. Fiscal Year 2007/08 represents the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced.
2. Since the projection period is limited to 10 years, it was assumed that all offenders sentenced under the proposed bill would receive a 25 year sentence (the minimum under the proposal). However, the actual sentence could range from 25 years to life imprisonment under the proposed bill.
3. This projection does not take into account any potential impact on post-release supervision caseloads or potential resource needs for electronic monitoring that would occur after the offender serves his/her 25 year sentence (minimum) and is supervised for the remainder of his/her natural life. In addition, this projection does not include any potential prison impact due to the revocation of post-release supervision for these offenders since it would occur outside the 10-year projection period.
4. Assumes no deterrent or incapacitative effects.

SECTION 15

Section 15 creates a new Class F felony offense, Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision, or other types of release. (G.S. 14-259A)

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations

would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Data from the NC Department of Correction's Division of Community Corrections indicate that 85 offenders altered, tampered, or damaged electronic monitoring equipment in CY 2005. If, for example, there were 85 Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 41 additional prison beds the first year and 85 additional prison beds the second year.

SECTION 17

Section 17 adds a new condition of probation for certain sex offenders. It amends G.S. 15A-1343(b2) to require offenders who are required to register under Part 3 of Article 27A (sexually violent predator, recidivist, or a person convicted of an aggravated offense), as well as other sex offenders who commit a reportable offense against a victim who was 15 or younger, to submit to electronic monitoring. It is not clear whether the period of electronic monitoring is for the entire probationary period or whether the period of electronic monitoring is to be set by the court.

Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. For purposes of this analysis, it is assumed that first degree rape (14-27.2, Class B1), second degree rape (14-27.3, Class C), first degree sexual offense (14-27.4, Class B1), and second degree sexual offense (14-27.5, Class C) are aggravated offenses. In FY 2004/05, there were 204 convictions for these offenses. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class A-D offenders are required to receive an active sentence.

In addition, it is not known how many sex offenders might be subject to this condition of probation as a result of committing a reportable offense against a victim who was 15 or younger. In FY 2004/05, there were 635 convictions for reportable sex offenses that resulted in probationary sentences. However, it is not known how many of the 635 convictions for which a probationary sentence was imposed would meet the criteria for the proposed electronic monitoring requirement.

The proposed amendment may have an impact on the prison population as a result of revocations for violations of probation relating to this new condition. However, the impact on the prison population cannot be determined. The proposed amendment may have an impact on resources needed for electronic monitoring that would be dependent upon the number of additional offenders assigned to this sanction.

SECTION 18

Section 18 amends the electronic monitoring fee requirement (G.S. 15A-1343(c2)) to include offenders covered by 15A-1343(b2)(7) [*see* Section 17 above]. Willful failure to pay is a violation of a condition of probation. The proposed amendment would not be expected to have a substantial impact on the prison population, although it may have some impact on the prison population through revocations for violations of probation relating to this condition of probation.

SECTION 19

Section 19 amends G.S. 15A-1344 to require electronic monitoring if probation is extended in response to a violation by an offender who is required to register under Part 3 of Article 27A (sexually violent predator, recidivist, or a person convicted of an aggravated offense), or a sex offender who commits a reportable offense against a victim who was 15 or younger. It is not clear whether the period of electronic monitoring is for the entire extended probationary period or whether the period of electronic monitoring is to be set by the court.

Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. For purposes of this analysis, it is assumed that first degree rape (14-27.2, Class B1), second degree rape (14-27.3, Class C), first degree sexual offense (14-27.4, Class B1), and second degree sexual offense (14-27.5, Class C) are aggravated offenses. In FY 2004/05, there were 204 convictions for these offenses. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class A-D offenders are required to receive an active sentence.

In addition, it is not known how many sex offenders might be subject to this condition of probation as a result of committing a reportable offense against a victim who was 15 or younger. In FY 2004/05, there were 635 convictions for reportable sex offenses that resulted in probationary sentences. However, it is not known how many of the 635 convictions for which a probationary sentence was imposed would meet the criteria for the proposed electronic monitoring requirement.

The proposed amendment may have an impact on the prison population as a result of revocations for violations of probation relating to the electronic monitoring requirement. However, the impact on the prison population cannot be determined. The proposed amendment may have an impact on resource needs for electronic monitoring.

SECTION 21

Section 21 amends G.S. 15A-1368.2 to require post-release supervision for life for a person convicted of G.S. 14-202.5, Lewd or lascivious molestation, and sentenced to a split sentence.

The proposed amendment may have an impact on the prison population as a result of revocation of post-release supervision for these offenders (*see* also Section 23). However, the impact on the prison population cannot be determined. The proposed amendment also may have an impact on post-release supervision resource needs. The potential impact is not known since there is no historical data to indicate how many convictions might occur under G.S. 14-202.5. However, since the lifetime period of post-release supervision is to follow a 25 year sentence (minimum), any impact on the prison population or post-release supervision resources would occur outside the 10-year projection period.

SECTION 22

Section 22 amends G.S. 15A-1368.3 to require that a post-release supervisee who was convicted of an offense that requires registration under Article 27A and who is arrested for a violation of post-release supervision must be held without bond until the preliminary hearing is conducted. The preliminary hearing must be held within 7 working days.

Since offenders held without bond are typically held in county jails, this proposed amendment would not be expected to have an impact on the prison population. It may have an impact on local jail populations; however, the impact is not known.

SECTION 23

Section 23 amends G.S. 15A-1368.4, Conditions of post-release supervision.

G.S. 15A-1368.4(b2)

G.S. 15A-1368.4(b2) requires electronic monitoring for life as a condition of post-release supervision for a person convicted of lewd and lascivious molestation and sentenced to a split sentence (conforming to Section 21). The proposed amendment may have an impact on the prison population as a result of the potential for revocation of post-release supervision for these offenders. The proposed amendment also may have an impact on resource needs for electronic monitoring. The potential impact is not known since there is no historical data to indicate how many convictions might occur under G.S. 14-202.5. However, since the lifetime period of post-release supervision and electronic monitoring are to follow a 25 year sentence (minimum), the impact would occur outside the 10-year projection period.

G.S. 15A-1368.4(b3)

G.S. 15A-1368.4(b3) requires electronic monitoring as a condition of post-release supervision for an offender who is required to register under Part 3 of Article 27A (sexually violent predator, recidivist, or a person convicted of an aggravated offense), or a sex offender who commits a reportable offense against a victim who was 15 or younger. These offenders are subject to 5 years of post-release supervision.

Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. For purposes of this analysis, it is assumed that first degree rape (14-27.2, Class B1), second degree rape (14-27.3, Class C), first degree sexual offense (14-27.4, Class B1), and second degree sexual offense (14-27.5, Class C) are aggravated offenses. In FY 2004/05, there were 53 convictions for first degree rape, 59 convictions for second degree rape, 53 convictions for first degree sexual offense, and 39 convictions for second degree sexual offense.

In addition, it is not known how many sex offenders might be subject to this condition of post-release supervision as a result of committing a reportable offense against a victim who was 15 or younger. In FY 2004/05, there were 401 Class B1-E convictions for reportable sex offenses that would be subject to post-

release supervision. However, it is not known how many of the 401 Class B1-E convictions would meet the criteria for the proposed electronic monitoring requirement for post-release supervision. (Note: In addition, statutory rape or sexual offense of person who is 13, 14, or 15 years old would be added to the “Sexually violent offenses” for which an offender must register on the sex offender registry. In FY 2004/05, there were 46 convictions under G.S. 14-27.7A, Statutory rape or sexual offense of person who is 13, 14, or 15 years old. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class A-D offenders are required to receive an active sentence.)

The proposed amendment may have an impact on the prison population as a result of revocations for violations of post-release supervision for these offenders relating to the electronic monitoring requirement. However, the impact on the prison population cannot be determined. The proposed amendment also may have an impact on resource needs for electronic monitoring.

GENERAL NOTE

This bill requires the Department of Correction to use an electronic monitoring system that actively monitors the offender unless such a system will not work due to technological or geographical limitations. It is not clear what impact this would have on violations.

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 2076/SB 1482 - JUVENILE CODE CHANGES

STATUTE

§ 7B-2508. Dispositional limits for each class of offense and delinquency history level.

DESCRIPTION

In the juvenile code, the “Serious” offense classification includes Class F through I felonies and Class A1 misdemeanors. The “Minor” offense classification includes Class 1, 2, and 3 misdemeanors.

This bill would move the following three misdemeanor offenses from Minor to Serious for disposition purposes:

G.S. 14-202.2, Indecent liberties between children, is a Class 1 misdemeanor.

G.S. 14-269, Carrying concealed weapons, is a Class 2 misdemeanor.

G.S. 14-269.7(a), Prohibitions on handguns for minors, is a Class 2 misdemeanor.

PUNISHMENT RANGE

CURRENT (if applicable): Minor offense classification.

PROPOSED: Serious offense classification.

ANALYSIS

Juveniles are not punished according to structured sentencing.

The Sentencing Commission did not develop the juvenile dispositional chart.

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 PREPARED: 6/6/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 2076 - JUVENILE CODE CHANGES

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 2089/SB 1450 - RECOMMENDATIONS/JOINT COMMITTEE
ON DV/FUNDS**

STATUTE

§ 50B-4.1. Violation of valid protective order.

DESCRIPTION

Subsection (f):

A person who

1. knowingly violates a valid protective order
2. after having been previously convicted of one offense under Chapter 50B.

PROPOSED PUNISHMENT RANGE

Class H felony.

ANALYSIS

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

Violating a valid protective order is a Class A1 misdemeanor. Currently, it becomes a Class H felony after the defendant has been previously convicted of three offenses under Chapter 50B.

FINDINGS

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

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

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 PREPARED: 6/6/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 2089 - RECOMMENDATIONS/JOINT COMMITTEE ON DV/FUNDS

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 2138 - TERRORISM/STATE CRIME

STATUTE

§ 14-288.26. Crime of terrorism.

DESCRIPTION

A person who

1. with the intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination, or kidnapping,
2. commits a specified offense, or provides material support or resources used in the attempt or commission of the specified offense.

“Specified offense” means any felony, assault, stalking, intimidating a witness, obstruction of justice, or any attempt or conspiracy to commit any of these offenses.

PROPOSED OFFENSE CLASS

One class higher than the offense committed. If the offense is a Class A1 misdemeanor, then the offense shall be a Class H felony. If the offense is a Class B1 or B2 felony, then the offense shall be a Class A felony and the person shall be sentenced to life imprisonment without parole.

ANALYSIS

FINDINGS

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

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

DATE PREPARED: 6/6/06

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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 2138 - TERRORISM/STATE CRIME (cont.)

STATUTE

§ 14-288.27. Duty to report crimes; penalty for failure to report in certain circumstances.

DESCRIPTION

A person who

1. Has reason to believe that a person has committed a specified offense, and
2. With the intent to assist the offender in eluding arrest,
3. (a) withholds information from, or does not notify, any law enforcement agency about the offender's involvement with a specified offense and the whereabouts of the offender, if known.
(b) harbors, or attempts to harbor, or assists another person in harboring, or attempting to harbor, the offender,
(c) conceals, or attempts to conceal, or assists another person in concealing, or attempting to conceal, the offender.
(d) provides information to the law enforcement agency regarding the offender that the person knows to be false information.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Under G.S. 14-2.5, attempts are punishable under the next lower classification as the offense which the offender attempted to commit.

FINDINGS



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



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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 2138 - TERRORISM/STATE CRIME

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 2145 - SECRET COMPARTMENTS IN MOTOR VEHICLES

STATUTE

§ 90-108.1. Vehicles with false, hidden, or secret compartments.

DESCRIPTION

A person who

1. owns or operates any vehicle and
2. knows that the vehicle contains a false or secret compartment (any enclosure that is intended and designed to be used to conceal, hide, or prevent discovery by law enforcement officers of the false, hidden, or secret compartment, or its contents).

A person who

1. installs, creates, builds, or fabricates a false, hidden, or secret compartment in any vehicle.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 6/6/06

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 2145 - SECRET COMPARTMENTS IN MOTOR VEHICLES

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 90-108.1(c) makes it a Class I felony for any person to own or operate any vehicle he or she knows to contain a false or secret compartment. It also makes it a Class I felony for any person to install, create, build, or fabricate a false, hidden or secret compartment in any vehicle.

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under the proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second 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 2809/SB 1223 - SECURITY AND IMMIGRATION COMPLIANCE

STATUTE

§ 14-43.4. Trafficking a person for sexual servitude.

DESCRIPTION

A person who

1. knowingly subjects or maintains another (adult)
2. in sexual servitude, or

A person who

1. knowingly recruits, entices harbors, transports, provides, or obtains by any means another person (adult)
2. for the purpose of sexual servitude.

(Sexual servitude - Any sexual activity as defined in G.S. 14-190.13

- a. for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- b. which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.)

PROPOSED OFFENSE CLASS

Class F felony (the victim is an adult).

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. 14-204, Prostitution and various acts abetting prostitution unlawful, is a Class 1 misdemeanor.

(See also SB 1627.)

FINDINGS

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

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

DATE PREPARED: 6/6/06

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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 2809/SB 1223 - SECURITY AND IMMIGRATION
COMPLIANCE (cont.)**

STATUTE

§ 14-43.4. Trafficking a person for sexual servitude.

DESCRIPTION

A person who

1. knowingly subjects or maintains another (minor)
2. in sexual servitude, or

A person who

1. knowingly recruits, entices harbors, transports, provides, or obtains by any means another person (minor)
2. for the purpose of sexual servitude.

(Sexual servitude - Any sexual activity as defined in G.S. 14-190.13

- a. for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- b. which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.)

PROPOSED OFFENSE CLASS

Class E felony (victim is a minor).

ANALYSIS

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

G.S. 14-190.18, Promoting prostitution of a minor, is a Class D felony.

G.S. 14-190.19, Participating in prostitution of a minor, is a Class F felony.

(See also SB 1627.)

FINDINGS



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



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

This offense would be consistent with a Class C felony or a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term or widespread societal injury as Class C felonies and offenses which reasonably tend to result or do result in serious societal injury as Class F 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: HB 2809/SB 1223-SECURITY AND IMMIGRATION
COMPLIANCE (cont.)**

STATUTE

§ 14-43.2. Involuntary servitude.

DESCRIPTION

A person who

1. unlawfully holds a person (minor) against the person's will:
 - a. for the performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt; and
 - b. by deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation. Other means of coercion or intimidation include all of the following:
 1. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule.
 2. Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or
 3. Providing a controlled substance, defined by G.S. 90-87, to the person.

PROPOSED OFFENSE CLASS

Class E felony (the victim is a minor).

ANALYSIS

Involuntary servitude where the victim is an adult remains a Class F felony.

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

(See also SB 1627.)

FINDINGS

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

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

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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 2809/SB 1223 - SECURITY AND IMMIGRATION
COMPLIANCE (cont.)**

STATUTE

§ 14-39. Kidnapping.

DESCRIPTION

Subsection (a)(5):

A person who

1. unlawfully confines, restrains, or removes from one place to another
2. a. any other person 16 years of age or over without the consent of such person, or
b. any other person under the age of 16 years without the consent of a parent or legal custodian of such person,
3. for the purpose of trafficking the person for sexual servitude in violation of G.S. 14-43.4.

PROPOSED OFFENSE CLASS

First degree kidnapping - The victim was either not released by the defendant in a safe place or had been seriously injured or sexually assaulted - Class C felony.

Second degree kidnapping - The victim was released in a safe place and had not been seriously injured or sexually assaulted - Class E 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 serious personal injury as Class E felonies.

(See also SB 1627.)

FINDINGS



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



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

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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 2809/SB 1223 - SECURITY AND IMMIGRATION
COMPLIANCE (cont.)**

STATUTE

§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully
2. makes a false, fictitious, or fraudulent statement of representation
3. in an affidavit executed under subsection (e) of the statute (Verification of lawful presence in the United States in order to receive public benefits).

PROPOSED OFFENSE CLASS

Punished by a fine of not more than \$1,000 or by imprisonment for one to five years, or both.

ANALYSIS

The statute does not assign an offense class to the offense but it does not exempt the offense from structured sentencing either.

(See also SB 1627.)

FINDINGS



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



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

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

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HB 2809 - SECURITY AND IMMIGRATION COMPLIANCE

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTION 3

Section 3(a)

Section 3(a) creates a new offense, G.S. 14-43.4, Trafficking a person for sexual servitude. It makes it a felony offense if a person knowingly subjects or maintains another in sexual servitude or knowingly recruits, entices, harbors, transports, provides, or obtains by any means another person for the purpose of sexual servitude. It is a Class F felony if the victim is an adult, a Class E felony if the victim is a minor. 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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. The offense as it relates to a minor victim may currently be covered under G.S. 14-190.18, Promoting prostitution of a minor, and G.S. 14-190.19, Participating in prostitution of a minor. The Administrative Office of the Courts (AOC) currently does not have specific offense codes for violations of G.S. 14-190.18 and 14-190.19. The lack of an AOC offense codes is some indication that these offenses are infrequently charged and/or infrequently result in convictions.

In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2004/05, 47% of Class E convictions resulted in active sentences, with an average estimated time served of 30 months. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

Section 3(b)

Section 3(b) amends G.S. 14-43.2, Involuntary servitude, to expand the acts that are covered. Currently, violation is a Class F felony. The punishment is revised to make it a Class F felony if the victim is an adult, a Class E felony if the victim is a minor. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-43.2. 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 expansion of the current statute. It is also not known how many convictions could become Class E felony convictions under the proposed bill.

In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two additional Class F convictions under this proposed bill

per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

If, for example, there were two Class F felony convictions that would become Class E felony convictions under the proposed amendment, this would result in the need for no additional prison beds the first year and one additional prison bed the second year.

Section 3(c)

Section 3(c) amends G.S. 14-39, Kidnapping, to include a person who unlawfully confines, restrains, or removes from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, for the purpose of trafficking the person for sexual servitude in violation of G.S. 14-43.4. Punishment remains a Class C felony if the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted (First Degree Kidnapping) and a Class E felony if the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted (Second Degree Kidnapping). The statute currently covers kidnapping for the purpose of involuntary servitude, so it is possible that some forms of kidnapping for trafficking for sexual servitude are already prosecuted under this statute.

In FY 2004/05, there were 54 convictions for First Degree Kidnapping and 159 convictions for Second Degree Kidnapping. It is not known how many additional convictions may result from the proposed broadening of the current statute.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2004/05 the average estimated time served for an offender convicted of a Class C offense was 97 months. If, for example, there was one additional Class C conviction per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2004/05, 47% of Class E convictions resulted in active sentences, with an average estimated time served of 30 months. If, for example, there were two additional Class E convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

SECTION 6

Section 6 creates Chapter 84B, Immigration Assistance Registration Act. The act establishes and enforces ethical standards for immigration assistance services provided by individuals who are not licensed attorneys. G.S. 84B-9 makes it a Class 2 misdemeanor for the first violation of any provision of Chapter 84B. A subsequent violation of the same offense within five years of the first violation is 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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. It is also not known how many offenders may be repeat offenders under the proposed statute.

In FY 2004/05, 16% of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 2 convictions was 11.8 days. Offenders serving active sentences of 90 days

or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

In FY 2004/05, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30.7 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 7

Section 7(b)

Section 7(b) amends G.S. 105-130.5, Adjustments to federal taxable income in determining State net income, to require the taxpayer to add to federal taxable income, to the extent it was not included in federal taxable income, any amount in excess of six hundred dollars that is paid to an unauthorized alien as wages or compensation unless the unauthorized alien is not directly compensated or employed by the taxpayer. It is possible that failing to do so could be prosecuted as an Attempt to Evade or Defeat Tax (G.S. 105-236). It is a Class H felony for a person to willfully attempt to evade or defeat a tax or its payment. In FY 2004/05, there were 7 convictions for Attempt to Evade or Defeat Tax.

It is not known how many additional convictions may result from the proposed amendment to this statute. In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H additional convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Section 7(d)

Section 7(d) amends G.S. 105-134.6, Adjustments to taxable income, to require the taxpayer to add to North Carolina taxable income, to the extent it was not included in taxable income, any amount in excess of six hundred dollars that is paid to an unauthorized alien as wages or compensation unless the unauthorized alien is not directly compensated or employed by the taxpayer. It is possible that failing to do so could be prosecuted as an Attempt to Evade or Defeat Tax (G.S. 105-236). It is a Class H felony for a person to willfully attempt to evade or defeat a tax or its payment. In FY 2004/05, there were 7 convictions for Attempt to Evade or Defeat Tax.

It is not known how many additional convictions may result from the proposed amendment to this statute. In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three additional Class H convictions per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 8

Article 4A, Withholding; Estimated Income Tax for Individuals, requires payers to withhold estimated income taxes from contractors. Section 8 amends G.S. 105-163.1, Definitions, to add an unauthorized alien to the definition of a contractor. Willful failure to collect, withhold, or pay over tax by a person who is

required to do so is a Class 1 misdemeanor (G.S. 105-236(8)). In FY 2004/05, there were no convictions under G.S. 105-236(8).

It is not known how many additional convictions may result from the proposed amendment to this statute. In FY 2004/05, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 30.7 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional convictions for this offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 9

Section 9 creates Chapter 135A, Public Benefits. G.S. 135A-1, Verification of lawful presence required to receive public benefits; definitions; exceptions, is the only statute in the Chapter. Subsection (g) makes it a criminal offense for a person to knowingly and willfully make a false, fictitious, or fraudulent statement of representation in an affidavit executed under this statute. The offense is punished by a fine of not more than one thousand dollars or by imprisonment for one to five years, or both. An offense class is not assigned and the offense is not exempted from structured sentencing.

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. Because the punishment provision is outside of structured sentencing, it is not possible to determine the impact of this bill on the prison population. However, it may have an impact on the prison population as a result of the potential for imprisonment for one to five years.

G.S. 108A-39 (Fraudulent Misrepresentation – Public Assistance) and G.S. 108A-53 (Fraudulent Misrepresentation – Food Stamps) contain similar offenses. Violation is a Class 1 misdemeanor if the amount is \$400 or less and a Class I felony if the amount is more than \$400. In FY 2004/05, there were 19 Class 1 misdemeanor convictions and 11 Class I felony convictions under G.S. 108A-39. There were 114 Class 1 misdemeanor and 30 Class I felony convictions under G.S. 108A-53.

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 61 - FELONY DEATH BY VEHICLE/
SEX OFFENDER AMEND. [v.5]

STATUTE

§ 20-141.4. Felony and misdemeanor death by vehicle.

DESCRIPTION

A person who

1. unintentionally
2. causes the death of another
3. while driving while impaired
4. which proximately causes that death.

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class E felony.

ANALYSIS

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

G.S. 14-17, second-degree murder, is a Class B2 felony.

The Sentencing Commission reviewed this offense in a previous version of SB 61 as a Class D felony in March 2005. The Commission found that the Offense Classification Criteria were not applicable.

FINDINGS

Bill is **consistent** with 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 homicide offenses.

DATE PREPARED: 6/7/2006

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 61 - FELONY DEATH BY VEHICLE/SEX OFFENDER AMEND. [v.5]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Analysis has not been 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 686 - METH. LAB PREVENTION ACT [v.4]

Regarding the review of SB 686 - Meth. Lab Prevention Act [v.4]

N.C.G.S. 164-43(e) states that the Sentencing Commission “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.” Senate Bill 686 passed both houses of the General Assembly during the 2005 long session, and a conference committee adopted a conference report on August 30, 2005. The House adopted the conference report the same day.

House Bill 248, Charlotte Interstate Loop, passed third reading in the House on June 15, 2005. A Senate committee substitute, re-titled the Meth. Lab Prevention Act, passed third reading in the Senate on August 24, 2005. The House concurred and House Bill 248 was ratified on September 2, 2005. *See* S.L. 2005-434.

But for the fact that Senate Bill 686 contains no exemption from its criminal provisions for certain liquid or pediatric formulations of pseudoephedrine, the portions of the Senate bill for which review by the Sentencing Commission is required are substantially similar to those in House Bill 248. Because Senate Bill 686 effectively has been superseded, the Sentencing Commission elected to review and make findings regarding only those sections that have no corresponding provision in House Bill 248.

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 686 - METH. LAB PREVENTION ACT [v.4] (cont.)

STATUTE

§ 90-113.52. Pseudoephedrine: restrictions on sales.
§ 90-113.56. Penalties.

DESCRIPTION

Subsection (c):

A retailer who

1. does not have a pharmacy on the premises
2. who willfully and knowingly
3. fails to maintain recorded video surveillance
4. of the portion of the premises where pseudoephedrine products are available for sale.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor for the first offense, Class I felony for a second or subsequent offense.

ANALYSIS

The Sentencing Commission does not have criteria for classifying misdemeanor offenses.

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

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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: SB 686 - METH. LAB PREVENTION ACT [v.4] (cont.)

STATUTE

§ 15A-1340.16. Aggravated and mitigated sentences. (Subsection (d), aggravating factors)

DESCRIPTION

Subdivision (16b):

The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.

PUNISHMENT RANGE

PROPOSED: Would allow the judge to sentence from the appropriate aggravated range for the offender's offense class and prior record level if the aggravating factor were admitted or found by a jury.

ANALYSIS

Aggravating factor (16a) currently applies to the manufacture of methamphetamine when committed where a minor lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by products, or its waste.

This provision is identical to that contained in SB 686 [v.3], which the Sentencing Commission reviewed in May 2005. The Commission found it to be consistent with G.S. 164-41.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 686 - METH. LAB PREVENTION ACT [v.4] (cont.)

STATUTE

§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.

DESCRIPTION

Subdivision (b)(6):

A person who

1. commits larceny
2. of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients.

PROPOSED OFFENSE CLASS

Class H felony, regardless of the value of the property stolen.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by the taking or removing of property as Class H felonies.

This conduct currently is punished as a Class H felony if the value of the property is over \$1,000, and a Class 1 misdemeanor if the value is \$1,000 or less.

If the offender is an employee of the retail establishment from which the product is stolen, the offense is punished according to G.S. 14-74, Larceny by servants and other employees.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 686 - METH. LAB PREVENTION ACT [v.4]

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.3]**

STATUTE

§14-27.3. Second-degree rape.

DESCRIPTION

A person who

1. engages in vaginal intercourse with another person
2. either
 - a. by force and against the will of the other person, or
 - b. who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or reasonably should know of the disability.

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class B2 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 serious debilitating long-term personal injury as Class B felonies.

This provision is identical to SB 1039 (v.2), which the Sentencing Commission reviewed in May, 2005, except that the previous version deleted “by force and” from the second element of the offense. The Commission found that version inconsistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.3] (cont.)**

STATUTE

§14-27.5. Second-degree sexual offense.

DESCRIPTION

A person who

1. engages in a sexual act with another person
2. either
 - a. by force and against the will of the other person, or
 - b. who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or reasonably should know of the disability.

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class B2 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 serious debilitating long-term personal injury as Class B felonies.

This provision is identical to SB 1039 (v.2), which the Sentencing Commission reviewed in May, 2005, except that the previous version deleted “by force and” from the second element of the offense. The Commission found that version inconsistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.3] (cont.)**

STATUTE

§ 14-27.2. First-degree rape.

DESCRIPTION

Any person who

1. engages in vaginal intercourse
2. with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless, and
3. performs any of the following:
 - a. employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon;
 - b. inflicts serious personal injury upon the victim or another person; or
 - c. commits the offense aided and abetted by one or more other persons.

PROPOSED OFFENSE CLASS

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.

First-degree rape currently is a Class B1 felony. Version 3 of SB 1039 creates a new means of committing the offense by adding the element of intercourse with the mentally disabled, mentally incapacitated, or physically helpless.

This provision is identical to SB 1039 (v.2), which the Sentencing Commission reviewed in May, 2005. The Commission found that version consistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.3] (cont.)**

STATUTE

§ 14-27.4. First-degree sexual offense.

DESCRIPTION

Any person who

1. engages in a sexual act
2. with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless, and
3. performs any of the following:
 - a. employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon;
 - b. inflicts serious personal injury upon the victim or another person; or
 - c. commits the offense aided and abetted by one or more other persons.

PROPOSED OFFENSE CLASS

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.

First-degree rape currently is a Class B1 felony. Version 3 of SB 1039 creates a new means of committing the offense by adding the element of a sexual act with the mentally disabled, mentally incapacitated, or physically helpless.

This provision is identical to SB 1039 (v.2), which the Sentencing Commission reviewed in May, 2005. The Commission found that version consistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1039 - INCREASE RAPE PENALTIES/HELPLESS VICTIMS [v.3]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Note: The analysis below was prepared after the Sentencing Commission's review of Version 2 of SB 1039 in June, 2005. The analysis is applicable to Version 3, also.

Section 1

This section reclassifies Second Degree Rape from Class C to Class B2. Convictions for Attempted Second Degree Rape would be raised from Class D to Class C. (See attached impact projection for the proposed reclassifications.)

In FY 2003/04 there were 81 convictions for Second Degree Rape and 21 convictions for Attempted Second Degree Rape. In FY 2003/04 the average estimated time served for an offender convicted of Second Degree Rape was 90 months. Based on the proposed reclassification from Class C to Class B2, the average estimated time served for these offenders would be 186 months. The average estimated time served for an offender convicted of Attempted Second Degree Rape was 71 months in FY 2003/04. Based on the proposed reclassification from Class D to Class C, the average estimated time served for these offenders would be 95 months.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 and C offenders are required to receive an active sentence. Convictions in these offense classes have a long-term effect on the prison population due to the long sentences imposed, which result in a *Astacking@* effect. Due to the mandatory active sentences and long sentence lengths, the proposed reclassifications would have long-term impact outside the 10-year projection period.

Section 2

This section reclassifies Second Degree Sexual Offense from Class C to Class B2. Convictions for Attempted Second Degree Sexual Offense would be raised from Class D to Class C. (See attached impact projection for the proposed reclassifications.)

In FY 2003/04 there were 41 convictions for Second Degree Sexual Offense and 16 convictions for Attempted Second Degree Sexual Offense. In FY 2003/04 the average estimated time served for an offender convicted of Second Degree Sexual Offense was 92 months. Based on the proposed reclassification from Class C to Class B2, the average estimated time served for these offenders would be 186 months. The average estimated time served for an offender convicted of Attempted Second Degree Sexual Offense was 57 months in FY 2003/04. Based on the proposed reclassification from Class D to Class C, the average estimated time served for these offenders would be 87 months.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 and C offenders are required to receive an active sentence. Convictions in these offense classes have a long-term effect on the prison population due to the long sentences imposed, which result in a *Astacking@* effect. Due to the

mandatory active sentences and long sentence lengths, the proposed reclassifications would have long-term impact outside the 10-year projection period.

Section 3

Section 3 amends First Degree Rape (G.S. 14-27.2) to create a new offense. It would make it a Class B1 felony for a person to engage in vaginal intercourse with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless, and

- a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
- b. Inflicts serious personal injury upon the victim or another person; or
- c. The person commits the offense aided and abetted by one or more other persons.

The conduct covered by the proposed new offense may currently be punished as first-degree rape by force and against the will of the other person if one of the factors is present (G.S. 14-27.2(2)). In FY 2003/04 there were 14 convictions for First Degree Rape (Class B1) and 8 convictions for Attempted First Degree Rape (Class B2). (These convictions exclude convictions under AOC's offense code for First Degree Rape of Child.) In FY 2003/04 the average estimated time served for an offender convicted of First Degree Rape was 353 months. It is not known how many of these convictions involved the conduct covered by the proposed new offense.

Under current law, the conduct covered by the proposed new offense could also be punished as second-degree rape under G.S. 14-27.3(a)(2). In FY 2003/04 there were 81 convictions for Second Degree Rape (Class C) and 21 convictions for Attempted Second Degree Rape (Class D). In FY 2003/04 the average estimated time served for an offender convicted of Second Degree Rape was 90 months. It is not known how many of these convictions involved the conduct covered by the proposed new offense and would become Class B1 convictions under the proposed statute.

All Class B1 offenders are required to receive an active sentence under Structured Sentencing. Class B1 felonies have a long-term effect on the prison population due to the long sentences imposed, which result in a stacking effect. Sentence lengths for Class B1 felons range from 144 months (lowest sentence in Prior Record Level I) to life without parole (highest sentence in Prior Record Level VI). Any convictions that would move from Class C for Second Degree Rape to Class B1 for First Degree Rape would result in long-term impact on the prison population beginning in the seventh year of the projection period and continuing outside the 10-year projection period due to the mandatory active sentences and long sentence lengths (90 months compared to 353 months, respectively).

Section 4

Section 4 amends first-degree sexual offense (G.S. 14-27.4) to create a new offense. It would make it a Class B1 felony for a person to engage in a sex act with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless, and

- a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
- b. Inflicts serious personal injury upon the victim or another person; or
- c. The person commits the offense aided and abetted by one or more other persons.

The conduct covered by the proposed new offense may currently be punished as first-degree sexual offense by force and against the will of the other person if one of the factors is present (G.S. 14-27.4(2)). In FY 2003/04 there were 19 convictions for First Degree Sexual Offense (Class B1) and 21 convictions for Attempted First Degree Sexual Offense (Class B2). (These convictions exclude convictions under AOC's offense code for First Degree Sexual Offense with Child.) In FY 2003/04 the average estimated time served for an offender convicted of First Degree Sexual Offense was 354 months. It is not known how many of these convictions involved the conduct covered by the proposed new offense.

Under current law, the conduct covered by the proposed new offense could also be punished as second-degree sexual offense under G.S. 14-27.5(a)(2). In FY 2003/04 there were 41 convictions for Second Degree Sexual Offense (Class C) and 16 convictions for Attempted Second Degree Sexual Offense (Class D). In FY 2003/04 the average estimated time served for an offender convicted of Second Degree Sexual Offense was 92 months. It is not known how many of these convictions involved the conduct covered by the proposed new offense and would become Class B1 convictions under the proposed statute.

All Class B1 offenders are required to receive an active sentence under Structured Sentencing. Class B1 felonies have a long-term effect on the prison population due to the long sentences imposed, which result in a stacking effect. Sentence lengths for Class B1 felons range from 144 months (lowest sentence in Prior Record Level I) to life without parole (highest sentence in Prior Record Level VI). Any convictions that would move from Class C for Second Degree Sexual Offense to Class B1 for First Degree Sexual Offense would result in long-term impact on the prison population beginning in the seventh year of the projection period and continuing outside the 10-year projection period due to the mandatory active sentences and long sentence lengths (92 months compared to 354 months, respectively).

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1039 - INCREASE RAPE PENALTIES/HELPLESS VICTIMS [v.3]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Section 1: Reclassifies Second Degree Rape from a Class C felony to a Class B2 felony and Attempted Second Degree Rape from a Class D felony to a Class C felony.

Section 2: Reclassifies Second Degree Sexual Offense from a Class C felony to a Class B2 felony and Attempted Second Degree Sexual Offense from a Class D felony to a Class C felony.

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS	
	Section 1	Section 2
2006/07	4	3
2007/08	9	6
2008/09	15	8
2009/10	21	17
2010/11	47	35
2011/12	86	57
2012/13	136	79
2013/14	192	113
2014/15	252	145
2015/16	328	181

NOTES

1. Assumes effective for crimes committed on or after 12/1/2005. Fiscal Year 2006/07 represents the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced.
2. Assumes no changes in judicial or prosecutorial behavior regarding convictions for this offense.
3. Assumes no deterrent or incapacitative effects.

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 1204 - JESSICA'S LAW/STRENGTHEN SEX OFFENDER LAWS

STATUTE

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

DESCRIPTION

Subdivision (a)(7):

A person

1. required to register as a sex offender
2. who fails to report in person to the sheriff's office as required for registration or semi-annual verification of registration.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

See also HB 1921 under felony bill analysis.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1204 - JESSICA'S LAW/STRENGTHEN SEX OFFENDER LAWS
(cont.)**

STATUTE

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

DESCRIPTION

Subdivision (a)(8):

A person

1. required to register as a sex offender
2. who reports [to the sheriff] his intent to reside in another state or jurisdiction but remains in this State without reporting to the sheriff.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

See also HB 1921 under felony bill analysis.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1204 - JESSICA'S LAW/STRENGTHEN SEX OFFENDER LAWS
(cont.)**

STATUTE

§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.

DESCRIPTION

A person who

1. has reason to believe that an offender is in violation of the requirements of Article 27A of Chapter 14, and
2. has the intent to assist the offender in eluding arrest or questioning by law enforcement, and
3. does any of the following:
 - a. withholds information from or fails to notify a law enforcement agency of the offender's noncompliance and, if known, the offender's whereabouts;
 - b. harbors, attempts to harbor, or assists another person in harboring or attempting to harbor, the offender;
 - c. conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the offender; or
 - d. provides information to law enforcement regarding the offender that the person knows to be false.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Under G.S. 14-2.5, attempts are punishable under the next lower classification as the offense which the offender attempted to commit.

See also HB 1921 under felony bill analysis.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1204 - JESSICA'S LAW/STRENGTHEN SEX OFFENDER LAWS
(cont.)**

STATUTE

§ 14-208.24A. Sexual predator prohibited from working or volunteering at any place where children regularly congregate.

DESCRIPTION

A person

1. required to register as a sexually violent predator, a recidivist, or for an aggravated offense under Chapter 14, Article 27A, Part 3
2. who works, for compensation or as a volunteer
3. at any business, school, day care center, park, playground, or other place where children regularly congregate.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

See also HB 1921 under felony bill analysis.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 1204 - JESSICA'S LAW/STRENGTHEN SEX OFFENDER LAWS
(cont.)**

STATUTE

§ 14-259A. Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision or other types of release.

DESCRIPTION

A person who

1. alters, tampers with, damages, or destroys
2. any electronic monitoring equipment
3. used to monitor a person who has been placed on probation, house arrest, post-release supervision, parole, study release or work release.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

See also HB 1921 under felony bill analysis.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1204 - JESSICA'S LAW/STRENGTHEN SEX OFFENDER LAWS

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

SECTIONS 1-5

These sections amend G.S. 14-208.6A, 14-208.6B, 14-208.7, 14-208.9, and 14-208.9A to make the registration requirements stricter by requiring the offender to comply with them in person (currently they can comply with some of the requirements by mail), within 48 hours (currently 10 days), and every six months (currently annually). Section 3 creates a minimum registration period of at least 10 years (currently limited to 10 years). (Under Section 8 of the bill, termination would no longer be automatic.) Section 4 changes the change of address reporting requirement to occur at the time the offender intends to move to another State and if he or she later decides to remain in this State (currently the requirement occurs when they actually move). Section 4 also requires a current photograph to be included. *See* Section 6 for analysis regarding additional violations that might occur as a result of these proposed amendments.

SECTION 6

Section 6 amends Failure to register (G.S. 14-208.11) to include the changes made in Sections 1-5. The proposed changes in Sections 1-5 add additional restrictions to sex offender registration that may make compliance with registration requirements more difficult, including an amendment to the time period for maintaining registration on the sex offender registry. Failure to comply with registration requirements at any point during the registration period is a Class F felony (G.S. 14-208.11). In FY 2004/05, there were 147 convictions under G.S. 14-208.11.

It is not known how many additional registration violations might occur as a result of these proposed changes. If, for example, there were two additional Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 7

Section 7 creates a new Class H felony offense, Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances. (G.S. 14-208.11A) Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be sentenced under this section. In FY 2004/05, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 8

Section 8 allows the offender to petition the superior court to terminate the registration requirement after 10 years. It is not known how many sex offenders will meet the conditions and have their registration

requirement terminated after 10 years, nor is it known how many will be continued and for how long (although the offender may again petition to terminate the registration requirement one year from the date of the denial of the original petition). Offenders who continue to be required to register may subsequently violate G.S. 14-208.11, Failure to comply with registration requirements. (See Section 6.)

SECTION 12

Section 12 creates a new felony offense, Sexually violent predator prohibited from working or volunteering at any place where children regularly congregate. (G.S. 14-208.24A) Since this section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

SECTION 13

Section 13 creates a new Class F felony offense, Altering, tampering, or damaging electronic monitoring equipment used to monitor persons placed on house arrest, probation, post-release supervision, or other types of release. (G.S. 14-259A)

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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. If, for example, there were two Class F convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Data from the NC Department of Correction's Division of Community Corrections indicate that 85 offenders altered, tampered, or damaged electronic monitoring equipment in CY 2005. If, for example, there were 85 Class F convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 41 additional prison beds the first year and 85 additional prison beds the second year.

SECTION 15

Section 15 adds a new condition of probation for certain sex offenders. It amends G.S. 15A-1343(b2) to require offenders who are required to register under Part 3 of Article 27A (sexually violent predator, recidivist, or a person convicted of an aggravated offense) to submit to electronic monitoring. It is not clear whether the period of electronic monitoring is for the entire probationary period or whether the period of electronic monitoring is to be set by the court.

Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either

of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. For purposes of this analysis, it is assumed that first degree rape (14-27.2, Class B1), second degree rape (14-27.3, Class C), first degree sexual offense (14-27.4, Class B1), and second degree sexual offense (14-27.5, Class C) are aggravated offenses. In FY 2004/05, there were 204 convictions for these offenses. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class A-D offenders are required to receive an active sentence.

The proposed amendment may have an impact on the prison population as a result of revocations for violations of probation relating to this new condition. However, the impact on the prison population cannot be determined. The proposed amendment may have an impact on resources needed for electronic monitoring that would be dependent upon the number of additional offenders assigned to this sanction.

SECTION 16

Section 16 amends the electronic monitoring fee requirement (G.S. 15A-1343(c2)) to include offenders covered by 15A-1343(b2)(7) [*see* Section 15 above]. Willful failure to pay is a violation of a condition of probation. The proposed amendment would not be expected to have a substantial impact on the prison population, although it could have some impact on the prison population through revocations for violations of probation relating to this condition of probation.

SECTION 17

Section 17 amends G.S. 15A-1344 to require electronic monitoring if probation is extended in response to a violation by an offender who is required to register under Part 3 of Article 27A (sexually violent predator, recidivist, or a person convicted of an aggravated offense). It is not clear whether the period of electronic monitoring is for the entire extended probationary period or whether the period of electronic monitoring is to be set by the court.

Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. For purposes of this analysis, it is assumed that first degree rape (14-27.2, Class B1), second degree rape (14-27.3, Class C), first degree sexual offense (14-27.4, Class B1), and second degree sexual offense (14-27.5, Class C) are aggravated offenses. In FY 2004/05, there were 204 convictions for these offenses. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class A-D offenders are required to receive an active sentence.

The proposed amendment may have an impact on the prison population as a result of revocations for violations of probation relating to the electronic monitoring requirement. However, the impact on the prison population cannot be determined. The proposed amendment may have an impact on resource needs for electronic monitoring.

SECTION 18

Section 18 amends G.S. 15A-1368.4, Conditions of post-release supervision. G.S. 15A-1368.4(b2) requires electronic monitoring as a condition of post-release supervision for an offender who is required to register under Part 3 of Article 27A (sexually violent predator, recidivist, or a person convicted of an aggravated offense). These offenders are subject to 5 years of post-release supervision.

Sexually violent predators are based on a finding of the court. Recidivists are defined as having a prior reportable conviction. It is not known how many offenders were found to be sexually violent predators or recidivists. AOC's Automated Criminal Information System does not contain any information regarding sexually violent predators or recidivists. Aggravated offense means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of sexual violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old. For purposes of this analysis, it is assumed that first degree rape (14-27.2, Class B1), second degree rape (14-27.3, Class C), first degree sexual offense (14-27.4, Class B1), and second degree sexual offense (14-27.5, Class C) are aggravated offenses. In FY 2004/05, there were 53 convictions for first degree rape, 59 convictions for second degree rape, 53 convictions for first degree sexual offense, and 39 convictions for second degree sexual offense.

The proposed amendment may have an impact on the prison population as a result of revocations for violations of post-release supervision for these offenders relating to the electronic monitoring requirement. However, the impact on the prison population cannot be determined. The proposed amendment also may have an impact on resource needs for electronic monitoring.

GENERAL NOTE

This bill requires the Department of Correction to use an electronic monitoring system that actively monitors the offender unless such a system will not work due to technological or geographical limitations. It is not clear what impact this would have on violations.

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 1550 - TAXPAYER AND CITIZEN PROTECTION ACT

STATUTE

§ 108A-25.4. Proof of lawful presence required for State and local programs of public assistance; temporary assistance; system for verifying lawful presence; exceptions to applications of this section; employer liable for medical services to indigent employees not lawfully present.

DESCRIPTION

A person who

1. applies for public assistance program benefits,
2. signs an affidavit attesting U.S. citizenship or classification as an alien lawfully admitted for permanent residence,
3. knowingly provides false information on the affidavit, and
4. is applying for benefits in an amount of more than \$400.

PROPOSED OFFENSE CLASS

Class I felony.

Class 1 misdemeanor if the benefits applied for are valued at not more than \$400.

ANALYSIS

The Sentencing Commission does not have criteria for classifying misdemeanor offenses.

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

FINDINGS



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



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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1550 - TAXPAYER AND CITIZEN PROTECTION ACT

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1613 - METHADONE DISTRIBUTION/2ND DEGREE
MURDER**

STATUTE

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

DESCRIPTION

A person who

1. distributes a substance described in G.S. 90-90 [Schedule II]
2. the ingestion of which causes the death of the user.

PROPOSED OFFENSE CLASS

Class B2 felony.

ANALYSIS

The Sentencing Commission did not use the Offense Classification Criteria in the classification of homicide offenses.

FINDINGS

Bill is **consistent** with 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 homicide offenses.

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1613 - METHADONE DISTRIBUTION/2ND DEGREE MURDER

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

General Statute 14-17 makes it second degree murder if a person unlawfully distributes opium, cocaine, or methamphetamine and the ingestion of the substance causes the death of the user. The proposed draft amends that offense to include the remaining Schedule II controlled substances. Second-degree murder is a Class B2 felony.

It is not known how many overdose deaths might lead to a conviction for second-degree murder under the proposed amendment. In FY 2004/05, there were 208 convictions for second-degree murder and four convictions for attempted second-degree murder. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. The average minimum sentence imposed for the 208 second-degree murder convictions was 179 months, with an average estimated time served of 190 months.

Adding the remaining Schedule II controlled substances to the list of controlled substances for which an overdose death can lead to a conviction of second-degree murder could have impact on the prison population. Class B2 felonies have a long-term effect on the prison population due to the mandatory active sentence and long sentences imposed, which results in a *stacking* effect. If, for example, there were one additional conviction per year as a result of the proposed amendment, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

Summary of Potential Impact on YDC Resources

Criminal bills that create or expand Class A through Class E felony offenses, which are classified as “Violent” under the juvenile disposition chart, may also increase the need for Youth Development Center (YDC) resources. YDC commitment is authorized in all Delinquency History Levels for the adjudication of Violent offenses. In FY 2004/05, 29% of juveniles adjudicated delinquent for a Violent offense received a Level 3 (*i.e.*, YDC) commitment. It is important to note that small increases in the demand for YDC resources represent a relatively large increase in the need for these resources as the current YDC population is only about 475 (as of April 2006).

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 1627 - SECURITY AND IMMIGRATION COMPLIANCE

STATUTE

§ 95-281. Public employer verification of work authorization.

DESCRIPTION

Subsection (b2):

A contractor or subcontractor who

1. enters into a contract
2. with a public employer (as defined by statute)
3. for the physical performance of services within this State
4. without registering and participating in a federal work authorization program (as defined by statute).

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the first offense, Class 1 misdemeanor for the second offense, Class I felony for the third and any subsequent offense.

ANALYSIS

The Sentencing Commission does not have criteria for classifying misdemeanor offenses.

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

Effective July 1, 2007, this offense applies to public employers, contractors, or subcontractors with 500 or more employees.

Effective July 1, 2008, this offense applies to public employers, contractors, or subcontractors with 100 or more employees.

Effective July 1, 2009, this offense applies to all public employers, contractors, or subcontractors.

FINDINGS



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



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

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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 1627 - SECURITY AND IMMIGRATION COMPLIANCE (cont.)

STATUTE

§ 14-43.4. Trafficking a person for sexual servitude.

DESCRIPTION

A person who

1. knowingly subjects or maintains another (adult)
2. in sexual servitude, or

A person who

1. knowingly recruits, entices harbors, transports, provides, or obtains by any means another person (adult)
2. for the purpose of sexual servitude.

[Sexual servitude - Any sexual activity as defined in G.S. 14-190.13

- a. for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- b. which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.]

PROPOSED OFFENSE CLASS

Class F felony (the victim is an adult).

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. 14-204. Prostitution and various acts abetting prostitution unlawful. - Class 1 misdemeanor.

This provision is identical to that contained in the same G.S. number in HB 2809/SB 1223.

FINDINGS



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



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

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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 1627 - SECURITY AND IMMIGRATION COMPLIANCE (cont.)

STATUTE

§ 14-43.4. Trafficking a person for sexual servitude.

DESCRIPTION

A person who

1. knowingly subjects or maintains another (minor)
2. in sexual servitude, or

A person who

1. knowingly recruits, entices harbors, transports, provides, or obtains by any means another person (minor)
2. for the purpose of sexual servitude.

[Sexual servitude - Any sexual activity as defined in G.S. 14-190.13

- a. for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or
- b. which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.]

PROPOSED OFFENSE CLASS

Class E felony (victim is a minor).

ANALYSIS

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

G.S. 14-190.18. Promoting prostitution of a minor. - Class D felony.

G.S. 14-190.19. Participating in prostitution of a minor. - Class F felony.

This provision is identical to that contained in the same G.S. number in HB 2809/SB 1223.

FINDINGS



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



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

This offense would be consistent with a Class C felony or a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term or widespread societal injury as Class C felonies and offenses which reasonably tend to result or do result in serious societal injury as Class F 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 1627 - SECURITY AND IMMIGRATION COMPLIANCE (cont.)

STATUTE

§ 14-43.2. Involuntary servitude.

DESCRIPTION

A person who

1. unlawfully holds a person (minor) against the person's will:
 - a. for the performance of labor, whether or not for compensation, or whether or not for the satisfaction of a debt; and
 - b. by deception, coercion, or intimidation using violence or the threat of violence or by any other means of coercion or intimidation. Other means of coercion or intimidation include all of the following:
 1. Exposing or threatening to expose any fact or information that if revealed would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule.
 2. Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or
 3. Providing a controlled substance, defined by G.S. 90-87, to the person.

PROPOSED OFFENSE CLASS

Class E felony (the victim is a minor).

ANALYSIS

Involuntary servitude where the victim is an adult remains a Class F felony.

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

This provision is identical to that contained in the same G.S. number in HB 2809/SB 1223.

FINDINGS



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



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

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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 1627 - SECURITY AND IMMIGRATION COMPLIANCE (cont.)

STATUTE

§ 14-39. Kidnapping.

DESCRIPTION

Subsection (a)(5):

A person who

1. unlawfully confines, restrains, or removes from one place to another
2. a. any other person 16 years of age or over without the consent of such person, or
b. any other person under the age of 16 years without the consent of a parent or legal custodian of such person,
3. for the purpose of trafficking the person for sexual servitude in violation of G.S. 14-43.4.

PROPOSED OFFENSE CLASS

First degree kidnapping - the victim was either not released by the defendant in a safe place or had been seriously injured or sexually assaulted - Class C felony.

Second degree kidnapping - the victim was released in a safe place and had not been seriously injured or sexually assaulted - Class E 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 serious personal injury as Class E felonies.

This provision is identical to that contained in the same G.S. number in HB 2809/SB 1223.

FINDINGS



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



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

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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 1627 - SECURITY AND IMMIGRATION COMPLIANCE (cont.)

STATUTE

§ 135A-1. Verification of lawful presence required to receive public benefits; definitions; exceptions.

DESCRIPTION

Subsection (g):

A person who

1. knowingly and willfully
2. makes a false, fictitious, or fraudulent statement of representation
3. in an affidavit executed under subsection (e) of the statute (Verification of lawful presence in the United States in order to receive public benefits).

PROPOSED OFFENSE CLASS

Punished by a fine of not more than \$1,000 or by imprisonment for one to five years, or both.

ANALYSIS

The statute does not assign an offense class to the offense but it does not exempt the offense from structured sentencing either.

This provision is identical to that contained in the same G.S. number in HB 2809/SB 1223.

FINDINGS



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



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

This section would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified felonies that tend to result or do result in serious societal injury as Class F felonies.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1627 - SECURITY AND IMMIGRATION COMPLIANCE

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

See analysis for HB 2809/SB 1223 for analysis of corresponding sections.

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 1694 - STATE GOVERNMENT ETHICS ACT

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (a):

A person who

1. offers or gives
2. to a legislator, member of a legislator's household, or business with which the legislator is associated
3. anything of monetary value, including a gift, favor or service, or promise of future employment.
4. a. where it is based on any understanding that the legislator's vote, official actions, or judgment would be influenced thereby, or
b. where it could be reasonably inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for bribery of a legislator under G.S. 120-86(a), repealed by this bill.

The offer of a bribe to a public official currently is a Class F felony under G.S. 14-218.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

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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 1694 - STATE GOVERNMENT ETHICS ACT (cont.)

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (a):

A legislator who

1. solicits or receives
2. anything of monetary value, including a gift, favor or service, or promise of future employment.
3. a. where it is based on any understanding that the legislator's vote, official actions, or judgment would be influenced thereby, or
b. where it could be reasonably inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for receipt or solicitation of a bribe by a legislator under G.S. 120-86(a), repealed by this bill.

The receipt or consent to receive a bribe by a public official currently is a Class F felony under G.S. 14-217.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

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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 1694 - STATE GOVERNMENT ETHICS ACT (cont.)

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (b):

A business associate, client, customer, or employer of a legislator, or the agent of those persons who

1. threatens that legislator, directly or indirectly
2. economically
3. with the intent to influence the legislator in the discharge of the legislator's official duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for economically threatening a legislator under G.S. 120-86(b), repealed by this bill.

Threatening another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity currently is extortion under G.S. 14-118.4, a Class F felony.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

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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 1694 - STATE GOVERNMENT ETHICS ACT (cont.)

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (c):

A person who

1. threatens another person, directly or indirectly
2. economically
3. in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for threatening another economically in order to compel an attempt to influence a legislator under G.S. 120-86(c), repealed by this bill.

Threatening another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity currently is extortion under G.S. 14-118.4, a Class F felony.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

DATE PREPARED: 6/07/2006

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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 1694 - STATE GOVERNMENT ETHICS ACT (cont.)

STATUTE

§ 138A-41. Penalty for false or misleading information.

DESCRIPTION

A covered person (as defined by statute) who

1. provides false or misleading information
2. on a statement of economic interest (as required by this Article)
3. knowing that the information is false or misleading.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The proposed bill would make knowing concealment or failure to disclose information on a statement of economic interest a Class 2 misdemeanor, under G.S. 138A-40.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1694 - STATE GOVERNMENT ETHICS ACT

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1741 - MODIFY APPROPRIATIONS ACT OF 2005 [v.3]

STATUTE

§ 14-208.37. Failure to enroll; tampering with device.

DESCRIPTION

Subsection (a):

A person who

1. is required to enroll in a satellite-based monitoring program [as a sex offender], and
2. fails to enroll.

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.

Failure to register as a sex offender as required by G.S. 14-208.7 is a Class F felony, under G.S. 14-208.11.

FINDINGS

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

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

This section would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified felonies that tend to result or do result in serious societal injury as Class F 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 1741 - MODIFY APPROPRIATIONS ACT OF 2005 [v.3] (cont.)

STATUTE

§ 14-208.37. Failure to enroll; tampering with device.

DESCRIPTION

Subsection (b):

A person who

1. intentionally
2. tampers with, removes, or vandalizes
3. a device issued pursuant to a satellite-based monitoring program
4. to a person duly enrolled in the program.

PROPOSED OFFENSE CLASS

Class C felony.

ANALYSIS

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

See also SB 1204, §14-259A.

FINDINGS



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



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

This section would be consistent with the Offense Classification Criteria for a Class F felony. The Sentencing Commission classified felonies that tend to result or do result in serious societal injury as Class F felonies.

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1741 - MODIFY APPROPRIATIONS ACT OF 2005

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Note: The analysis below was prepared for a previous version of SB 1741. The criminal offenses in the bill have not changed in version 3.

Pool

Data from the NC Department of Correction's Division of Community Corrections indicate that there would be 300 offenders required to enroll in a satellite monitoring program in the first year. It is not known how many of these 300 offenders would still be enrolled in a satellite monitoring program in the second year or how many additional offenders would be required to enroll in the second year. It is also not known how many offenders would be released from prison without DCC supervision who would meet the criteria for enrollment under 14-208.33(a)(2). [Note: In FY 2004/05, there were 309 reportable convictions that received an active sentence and would not be subject to subsequent DCC supervision upon release (Class F-I felonies and Class A1 misdemeanors).]

14-208.37

14-208.37(a) makes it a Class E felony for any person required to enroll in a satellite-based monitoring program to fail to enroll. 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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. In FY 2004/05, 47% of Class E convictions resulted in active sentences, with an average estimated time served of 30 months. If, for example, there were two Class E convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. [Note: The estimate for the second year is currently based on a 2% growth rate for felony convictions. The second year estimate may need to be revised upward based on DOC's estimate of growth.]

14-208.37(b) makes it a Class C felony for any person to intentionally tamper with, remove, or vandalize a device issued pursuant to a satellite-based monitoring program to a person duly enrolled in the program. 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 bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2004/05 the average estimated time served for an offender convicted of a Class C offense was 97 months. If, for example, there were one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Of the 300 offenders estimated to be required to enroll, DOC estimates that 3-5% may be charged with intentionally tampering with, removing, or vandalizing electronic monitoring equipment. If, for example, there were 9 (or 3% of 300) Class C convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 9 additional prison bed the first year and

19 additional prison beds the second year. If, for example, there were 12 (or 4% of 300) Class C convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 12 additional prison bed the first year and 25 additional prison beds the second year. If, for example, there were 15 (or 5% of 300) Class C convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for 15 additional prison bed the first year and 31 additional prison beds the second year. [Note: The estimate for the second year is currently based on a 2% growth rate for felony convictions. The second year estimate may need to be revised upward based on DOC's estimate of growth.]

Sections 16.7(b), (d), (e), (g), and (h)

Sections 16.7(b), (d), (e), (g), and (h) amend the conditions of probation, post-release supervision, parole, and delegated authority to include satellite based monitoring for offenders described in 14-208.33(a)(1) and (a)(2). Violation could result in modification or revocation. The proposed amendments may have some impact on the prison population through revocations for violations of probation, post-release supervision, or parole relating to this new condition. However, its impact cannot be determined.

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 1833 - MILITARY FUNERAL/UNLAWFUL PROTEST

STATUTE

§ 14-277.5. Prohibit disorderly conduct at military funeral or memorial service.

DESCRIPTION

A person who

1. within 300 feet of a military funeral, memorial service, procession, or burial
2. within one hour preceding, during, or one hour after the funeral, service, procession, or burial
3. does any of the following:
 - a. makes a loud and raucous noise that causes unreasonable distress to the persons attending the funeral or memorial service or participating in the procession
 - b. directs abusive epithets or makes a threatening gesture that the person knows or reasonably should know is likely to provoke a violent reaction by another, or
 - c. disturbs or disrupts the funeral, memorial service, procession, or burial by conduct intended to disrupt the funeral, memorial service, procession, or burial.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor for the first offense, Class 1 misdemeanor for the second offense, Class I felony for the third or subsequent offense.

ANALYSIS

The Sentencing Commission does not have criteria for classifying misdemeanors.

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

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1833 - MILITARY FUNERAL/UNLAWFUL PROTEST

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1976 - REFORM GOVERNMENTAL ETHICS

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (a):

A person who

1. offers or gives
2. to a legislator, member of a legislator's household, or business with which the legislator is associated
3. anything of monetary value, including a gift, favor or service, or promise of future employment.
4. a. where it is based on any understanding that the legislator's vote, official actions, or judgment would be influenced thereby, or
b. where it could be reasonably inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for bribery of a legislator under G.S. 120-86(a), repealed by this bill, and to the offense proposed under the same G.S. number in SB 1694.

The offer of a bribe to a public official currently is a Class F felony under G.S. 14-218.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

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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 1976 - REFORM GOVERNMENTAL ETHICS (cont.)

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (a):

A legislator who

1. solicits or receives
2. anything of monetary value, including a gift, favor or service, or promise of future employment.
3. a. where it is based on any understanding that the legislator's vote, official actions, or judgment would be influenced thereby, or
b. where it could be reasonably inferred that the thing of value would influence the legislator in the discharge of the legislator's duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for receipt or solicitation of a bribe by a legislator under G.S. 120-86(a), repealed by this bill, and to the offense proposed under the same G.S. number in SB 1694.

The receipt or consent to receive a bribe by a public official currently is a Class F felony under G.S. 14-217.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

DATE PREPARED: 6/07/2006

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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 1976 - REFORM GOVERNMENTAL ETHICS (cont.)

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (b):

A business associate, client, customer, or employer of a legislator, or the agent of those persons who

1. threatens that legislator, directly or indirectly
2. economically
3. with the intent to influence the legislator in the discharge of the legislator's official duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for economically threatening a legislator under G.S. 120-86(b), repealed by this bill, and to the offense proposed under the same G.S. number in SB 1694.

Threatening another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity currently is extortion under G.S. 14-118.4, a Class F felony.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

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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 1976 - REFORM GOVERNMENTAL ETHICS (cont.)

STATUTE

§ 138A-15. Bribery, etc.

DESCRIPTION

Subsection (c):

A person who

1. threatens another person, directly or indirectly
2. economically
3. in order to compel the threatened person to attempt to influence a legislator in the discharge of the legislator's duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

This provision is identical to the existing Class F felony for threatening another economically in order to compel an attempt to influence a legislator under G.S. 120-86(c), repealed by this bill, and to the offense proposed under the same G.S. number in SB 1694.

Threatening another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity currently is extortion under G.S. 14-118.4, a Class F felony.

FINDINGS



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



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

Note: G.S. 138A-45(a) of this bill conflicts with this provision in that it provides that, except as provided in Article 4, "no criminal penalty shall attach for any violation of this Chapter." G.S. 138A-15 is contained in Article 2.

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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 1976 - REFORM GOVERNMENTAL ETHICS (cont.)

STATUTE

§ 138A-41. Penalty for false or misleading information.

DESCRIPTION

A covered person (as defined by statute) who

1. provides false or misleading information
2. on a statement of economic interest (as required by this Article)
3. knowing that the information is false or misleading.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The proposed bill would make knowing concealment or failure to disclose information on a statement of economic interest a Class 1 misdemeanor, under G.S. 138A-40.

The felony offense proposed by this bill is identical to that contained in the same G.S. number in SB 1694.

FINDINGS



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



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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1976 - REFORM GOVERNMENTAL ETHICS

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 1983 - ELECTION SECURITY ACT

STATUTE

§ 163-166.12A. North Carolina voter identification card.

DESCRIPTION

Subsection (d):

A person who

1. commits any fraud or falsification
2. on an application for a North Carolina voter identification card.

PROPOSED OFFENSE CLASS

Class F felony, under G.S. 14-209.

ANALYSIS

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

FINDINGS



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



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

DATE PREPARED: 6/07/2006

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1983 - ELECTION SECURITY ACT

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been 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 2040 - MEDICAID FRAUD/INCR. PENALTY/SUBPOENA

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (a):

Any provider of medical assistance (under Ch. 108A, Art. 2, Part 6 - Medical Assistance Program) who

1. knowingly and willfully
2. makes of causes to be made
3. any false statement or representation of a material fact
4. a. in any application for payment under Part 6, or for use in determining entitlement to such payment;
or
b. with respect to the conditions or operation of a provider or facility in other that such provider or facility may qualify or remain qualified to provide assistance under Part 6.

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 occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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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 2040 - MEDICAID FRAUD/INCR. PENALTY/
SUBPOENA (cont.)**

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (b):

Any provider of medical assistance (under Ch. 108A, Art. 2, Part 6 - Medical Assistance Program) who

1. knowingly and willfully
2. conceals or fails to disclose
3. any fact or event
4. affecting
 - a. his initial or continuing entitlement to payment under Part 6; or
 - b. the amount of payment to which such person is or may be entitled.

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 occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS



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



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

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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 2040 - MEDICAID FRAUD/INCR. PENALTY/
SUBPOENA (cont.)**

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

Any provider of medical assistance (under Ch. 108A, Art. 2, Part 6 - Medical Assistance Program) who

1. knowingly and willfully
2. executes a scheme or artifice
3. to violate this section
4. when payments applied for of affected total less than \$100,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss occasioned by breach of trust, formal or informal, or in significant societal injury as Class H felonies.

FINDINGS



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



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

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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 2040 - MEDICAID FRAUD/INCR. PENALTY/
SUBPOENA (cont.)**

STATUTE

§ 108A-63. Medical assistance provider fraud.

DESCRIPTION

Subsection (e):

Any provider of medical assistance (under Ch. 108A, Art. 2, Part 6 - Medical Assistance Program) who

1. knowingly and willfully
2. executes a scheme or artifice
3. to violate this section
4. when payments applied for of affected total \$100,000 or more.

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.

FINDINGS



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



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

DATE PREPARED: 6/07/2006

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 2040 - MEDICAID FRAUD/INCR. PENALTY/SUBPOENA

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED
SENTENCING**

Analysis has not been requested yet.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**ANALYSIS OF BILLS TO CREATE OR RECLASSIFY MISDEMEANOR OFFENSES
(PREPARED PURSUANT TO G.S. 164-43)**

The Sentencing Commission has no specific criteria for classifying misdemeanors. Consequently, the Offense Classification Criteria are not applicable regarding the following proposed misdemeanor bills. The projected impact of these bills is discussed following.

BILL NUMBER/SHORT TITLE: HB 1843 - REVISE LEGISLATIVE ETHICS ACT-1 [v.3]

STATUTE: § 120-320. Concealing or failing to disclose materia information.

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1844 - EXECUTIVE BRANCH ETHICS ACT-1 [v.3]

STATUTE: § 138A-40. Concealing or failing to disclose material information.

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1845 - PERMITTED USE OF CAMPAIGN FUNDS

STATUTE: §163-278.16B. Use of contributed amounts for certain purposes.

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1848 - NO BLANK CONTRIBUTION CHECKS [v.3]

STATUTE: § 163-278.20A. Making a contribution through an intermediary.

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1849 - LOBBYING REFORMS 2006

STATUTE: § 120-47.7C. Prohibitions.

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

STATUTE: § 163-278.13C. Limitation on contributions by registered lobbyists.

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1871 - SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK

STATUTE: § 20-9. What persons shall not be licensed. (Subsection (i))

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 2221 - MERCURY SWITCH AMENDMENTS

STATUTE: § 130A-310.55. Violations of Article; enforcement. (Subsection (b))

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

STATUTE: § 130A-310.55. Violations of Article; enforcement. (Subsection (d))

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 2560 - TAX ON ILLEGAL IMMIGRANT WIRE TRANSFERS

STATUTE: § 105-187.62. Penalties.

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 2809 - SECURITY AND IMMIGRATION COMPLIANCE

STATUTE: § 84B-9. Violations; penalties.

PROPOSED OFFENSE CLASS: Class 2 misdemeanor for a first offense and a Class 1 misdemeanor for any subsequent offenses committed within five years of a previous conviction for the same offense.

BILL NUMBER/SHORT TITLE: SB 948 - AMEND BOATING SAFETY [v.3]

STATUTE: § 75A-5.1. Commercial fishing vessels; renewal of identification number.

Subsection (d) (false information on application for, or receipt for, a certificate of number)

CURRENT OFFENSE CLASS: Class 1 misdemeanor.

PROPOSED OFFENSE CLASS: Same.

ANALYSIS: Conforming change to account for new “certificate of number” format.

STATUTE: § 75A-5.2. Vessel agents.

Subsection (h) (misconduct by vessel agents)

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

STATUTE: § 75A-16.1. Boating safety course.

Subsection (f) (present fictitious boating safety card or attempt to obtain same by fraud)

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

STATUTE: § 75A-17. Enforcement of Chapter.

Subsection (c) (use of flashing blue light on non-law enforcement vessel)

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

Subsection (e) (failure to stop vessel as directed by law enforcement)

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

Subsection (f) (fail to slow to no-wake speed within 50 yards of law enforcement vessel displaying a flashing blue light)

PROPOSED OFFENSE CLASS: Class 3 misdemeanor.

STATUTE: § 75A-48. Levy of execution, etc.

CURRENT OFFENSE CLASS: Class 1 misdemeanor.

PROPOSED OFFENSE CLASS: Same.

ANALYSIS: The proposed bill expands the class of offenders for fraudulent transfer of title after a levy and seizure of a vessel from “any owner” to “any person.”

BILL NUMBER/SHORT TITLE: SB 1087 - LIMITED DRIVING PRIVILEGES - DWLR [v.3]

STATUTE: § 20-20.1. Limited driving privilege for certain revocations.

Subsection (o) (violation of terms of limited driving privilege)

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: SB 1495 - ENHANCE EMBARGO AUTH/PROTECT FOOD SUPPLY

STATUTE: § 130A-21. Embargo.

Subsection (a) (removing or disposing of food or drink under embargo without authorization)

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: SB 1550 - TAXPAYER AND CITIZEN PROTECTION ACT

STATUTE: § 108A-25.4. Proof of lawful presence required for State and local programs of public assistance; temporary assistance; system for verifying lawful presence; exceptions to applications of this section; employer liable for medical services to indigent employees not lawfully present.

Subdivision (a)(1) (false affidavit of citizenship or lawful alien status)

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

See also SB 1550 under felony analysis.

Subdivision (a)(1)d. (State or local government employee’s knowing and willful failure to report violation of federal immigration law)

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

Subdivision (a)(1)d. (supervisor who fails to direct State or local government employee to correct failure to report violation of federal immigration law)

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

BILL NUMBER/SHORT TITLE: SB 1627 - SECURITY AND IMMIGRATION COMPLIANCE

STATUTE: § 84B-9. Penalties (for prohibited conduct in providing immigration assistance services, as defined by statute).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor for the first offense, Class 1 misdemeanor for an offense committed within five years of conviction for the same offense.

ANALYSIS: Any fine imposed for violation of this Chapter may be “up to one thousand dollars,” the same limit as provided by statute for a Class 2 misdemeanor. Fines for Class 1 misdemeanors under G.S. 15A-1340.23(a) normally are within the discretion of the judge.

See also SB 1627 under felony bill analysis.

BILL NUMBER/SHORT TITLE: SB 1694 - STATE GOVERNMENT ETHICS ACT

STATUTE: § 138A-40. Concealing or failing to disclose material information (on a statement of economic interest of a covered person).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

See also SB 1694 under felony bill analysis.

BILL NUMBER/SHORT TITLE: SB 1833 - MILITARY FUNERAL/UNLAWFUL PROTEST

STATUTE: § 14-277.5. Prohibit disorderly conduct at military funeral or memorial service.

PROPOSED OFFENSE CLASS: Class 2 misdemeanor for the first offense, Class 1 misdemeanor for the second offense.

See also SB 1833 under felony bill analysis.

BILL NUMBER/SHORT TITLE: SB 1947 - ASSAULT HANDICAPPED/INCREASE PENALTY

STATUTE: § 14-32.1. Assaults on handicapped persons; punishments.

CURRENT OFFENSE CLASS: Class 1 misdemeanor.

PROPOSED OFFENSE CLASS: Class A1 misdemeanor.

BILL NUMBER/SHORT TITLE: SB 1948 - REFORM LOBBYING LAWS

STATUTE: § 120-47.9. Punishment for violation (of lobbying restrictions).

§ 120-47.5A. Certain gifts by lobbyist and lobbyist’s principal prohibited; exemptions.

§ 120-47.7C. Prohibitions (of employment as a lobbyist by certain former officials, on service of lobbyists as campaign treasurers or on certain state bodies, and of certain uses of lobbyist funds)

§ 120-47.8B. Advocacy Day (limitations on number and scheduling).

CURRENT OFFENSE CLASS: Class 1 misdemeanor.

PROPOSED OFFENSE CLASS: Same.

STATUTE: § 163-278.13C. Limitation on contributions by registered lobbyists (to political campaigns or officials).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

BILL NUMBER/SHORT TITLE: SB 1976 - REFORM GOVERNMENTAL ETHICS

STATUTE: § 138A-40. Concealing or failing to disclose material information (on a statement of economic interest of a covered person).

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

See also SB 1976 under felony bill analysis.

STATUTE: § 120-47.9. Punishment for violation (of lobbying restrictions).

Amended or new offenses:

§ 120-47.5A. Certain gifts by lobbyist and lobbyist's principal prohibited; exemptions.

§ 120-47.7C. Prohibitions (of employment as a lobbyist by certain former officials, on service of lobbyists as campaign treasurers or on certain state bodies, and of certain uses of lobbyist funds)

§ 120-47.8B. Advocacy Day (limitations on number and scheduling).

CURRENT OFFENSE CLASS: Class 1 misdemeanor.

PROPOSED OFFENSE CLASS: Same.

STATUTE: § 163-278.13C. Limitation on contributions by registered lobbyists (to political campaigns or officials).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

STATUTE: § 163-278.16B. Use of contributed amounts for certain purposes (intentional violation of prohibitions on use of candidate contributions).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

STATUTE: § 163-278.20A. Making a contribution through intermediary (except as permitted).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

STATUTE: § 163-278.13(e). Limitation on contributions (capping contributions by political committees to \$10,000 per election cycle).

CURRENT OFFENSE CLASS: Class 2 misdemeanor.

PROPOSED OFFENSE CLASS: Same.

BILL NUMBER/SHORT TITLE: SB 2050 - THE BRUCE STEVENS SOLICITATION ACT

STATUTE: § 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.

Subsection (e) (failure to follow officer's order to cease solicitation of contributions at roadside by individual otherwise authorized to do so).

PROPOSED OFFENSE CLASS: Class 2 misdemeanor.

Note: The proposed bill refers to G.S. 20-75 to which the new subsection (e) would be added, apparently a typographical error.

ESTIMATED ADDITIONAL PRISON POPULATION

Because these bills establish misdemeanor penalties, they are not expected to have any significant impact on the state prison system. The impact on local jail populations is not known.

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