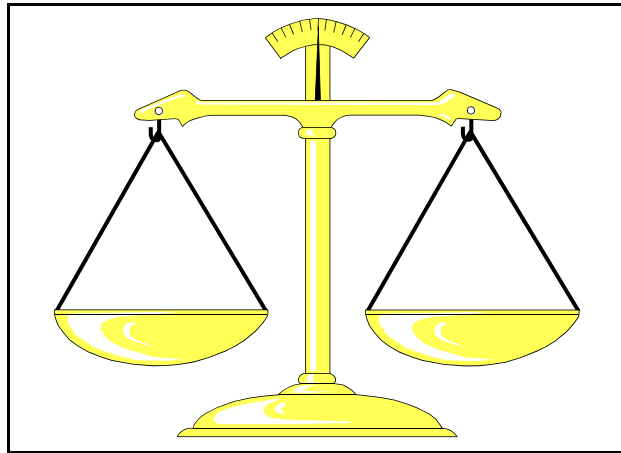


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



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

***SUBMITTED TO THE 2004 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2004***

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CHAIRMAN**

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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 the week ending June 11, 2004. 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, 2004.

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 11, 2004.

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

BILL NUMBER/SHORT TITLE: HB 1351 - LOCAL OPTION EDUCATION LOTTERY

STATUTE

§ 143D-39. No financial interest in certain persons allowed and no bribes or gifts from certain persons allowed.

DESCRIPTION

A Commissioner, the Director, or an employee of the State Lottery Commission who

1. has a financial interest in a lottery contractor, or
2. solicits, accepts, or agrees to accept anything from a lottery contractor, a lottery vendor, or a person who could reasonably be expected to submit a bid to provide goods or services to the State Lottery Commission.

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: 6/11/04

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HOUSE BILL 1351 - LOCAL OPTION EDUCATION LOTTERY

**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 1354 - STRENGTHEN DOMESTIC VIOLENCE LAWS

STATUTE

§ 14-32.4. Assault inflicting serious bodily injury; strangulation; penalties.

DESCRIPTION

Subsection (b):

A person who

1. assaults another person and
2. inflicts physical injury
3. by strangulation.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Assault with a deadly weapon inflicting serious injury is a Class E felony.

Assault inflicting serious bodily injury is a Class F felony.

Assault inflicting serious injury is a Class A1 misdemeanor.

Assault is a Class 2 misdemeanor.

FINDINGS



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



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

Note: The purpose of the bill is to strengthen domestic violence laws but the offense does not require that any relationship exist between the defendant and the victim. In addition, offenses are classified under structured sentencing based on the resulting harm. This offense results in physical injury but it is classified higher than assault inflicting serious injury, which is a Class A1 misdemeanor (G.S. 14-33(c)(1)).

DATE PREPARED: 6/11/04

BILL CONTINUED ON NEXT PAGE

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 1354 - STRENGTHEN DOMESTIC VIOLENCE LAWS (CONT.)

STATUTE

§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.

DESCRIPTION

A person who

1. is convicted of an assault or communicating a threat and
2. is found to have a personal relationship with the victim and
3. is sentenced to a community punishment.

PUNISHMENT RANGE

CURRENT (if applicable): Community punishments include supervised and unsupervised probation, fines, restitution, and community service.

PROPOSED: Would be eligible for house arrest with electronic monitoring under G.S. 15A-1343(b1)(3c).

ANALYSIS

House arrest with electronic monitoring is an intermediate punishment, curfew with electronic monitoring is a supervision tool.

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: 6/11/04

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HOUSE BILL 1354: STRENGTHEN DOMESTIC VIOLENCE LAWS

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING
[May 13, 2004]**

Part X. Create Strangulation Offense

Section 10.1

Assault inflicting physical injury by strangulation is a new offense created under this proposal. Since it is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the state prison population. It is not known how many offenders might be sentenced under this bill. If, for example, there were three Class H 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.

According to data extracted by the Administrative Office of the Courts (AOC), there were 21,805 defendants charged with simple assault, 2,241 defendants charged with assault inflicting serious injury, 29,248 defendants charged with assault on a female, and 11,955 defendants charged with other Class A1 misdemeanor assaults.¹ The AOC estimates that physical injury by strangulation was involved in the following:²

- 7% (n=1,527) of simple assault cases;
- 12% (n=269) of assault inflicting serious injury cases;
- 12% (n=3,510) of assault on a female cases;
- 3% (n=359) of other Class A1 misdemeanor assault cases.

An estimated 5,665 cases may be affected by this proposal. In FY 2002/03, 32.9% of offenders convicted of a Class H felony received an active punishment with an average estimated time served of 10.5 months. The remaining 67.1% of offenders convicted of a Class H felony received a non-active punishment. The revocation rate for these offenders was 49.5%. Assuming that 29.3% of Class H charges result in Class H convictions, there would be an estimated 1,660 convictions for this offense per year.³ If this were the

¹ OTHER CLASS A1 ASSAULTS INCLUDE: ASSAULT WITH A DEADLY WEAPON, ASSAULT ON A CHILD UNDER 12, ASSAULT GOVERNMENT OFFICIAL/EMPLOYEE, AND ASSAULT SCHOOL EMPLOYEE/VOLUNTEER.

² ESTIMATES ON THE PROPORTION OF CASES THAT WOULD BE AFFECTED BY THE PROPOSED CHANGE ARE BASED ON RESPONSES FROM DISTRICT ATTORNEYS SURVEYED BY THE ADMINISTRATIVE OFFICE OF THE COURTS.

³ THIS RATE IS BASED ON AN AOC ANALYSIS OF FELONY CHARGES BY OFFENSE CLASS AND RESULTING CONVICTIONS BY OFFENSE CLASS FOR CALENDAR YEAR 2003. THERE WERE 35,628 DEFENDANTS WITH A MOST SERIOUS CHARGE FOR A CLASS H FELONY. OF THESE, 10,456 (29.3%)

case, the combination of active sentences and probation revocations would result in the need for 478 additional prison beds the first year and 961 additional prison beds the second year.

Part XII. Domestic Violence Offense Tracking

Section 12.1

Subsection (a):

Prison impact not applicable.

Subsection (b):

In FY 2002/03 there were 4,426 convictions for simple assault, 572 convictions for assault and battery, 294 convictions for misdemeanor child abuse, and 3,144 convictions for communicating threats. In all, there were 8,436 convictions for these offenses. Under the proposal, offenders falling in Prior Conviction Level I who receive a Community punishment would be eligible to be placed on house arrest with electronic monitoring if convicted of one of these misdemeanor offenses and a personal relationship was involved. It is not known how many of these convictions involved a personal relationship. However, 42% (n=3,583) of convictions fell in Prior Conviction Level 1 and received a community punishment. This could result in the need for additional community corrections resources.

WERE CONVICTED OF A CLASS H FELONY AS THEIR MOST SERIOUS CONVICTION. IT IS IMPORTANT TO NOTE THAT MOST OF THE CLASS H FELONIES INVOLVE PROPERTY OFFENSES SUCH AS LARCENY AND BREAKING AND/OR ENTERING, WHICH ARE COMMONLY REDUCED TO MISDEMEANORS (E.G., MISDEMEANOR LARCENY AND MISDEMEANOR BREAKING AND/OR ENTERING). IT IS POSSIBLE THAT THE CURRENT 29.3% CONVICTION RATE FOR CLASS H OFFENSES, BASED LARGELY ON PROPERTY OFFENSES, MAY UNDERESTIMATE THE CONVICTION RATE FOR A CLASS H ASSAULT OFFENSE.

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 1453 - DISCHARGING FIREARM ON SCHOOL PROPERTY

STATUTE

§ 14-269.2(b). Weapons on campus or other educational property.

DESCRIPTION

A person who

1. discharges a firearm
2. a. on educational property or
b. at a curricular or extracurricular activity sponsored by a school.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

Possessing or carrying a weapon on campus or other educational property is a Class I felony.

Discharging a weapon into occupied property is a Class E felony.

FINDINGS



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



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

DATE PREPARED: 6/11/04

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HOUSE BILL 1453: DISCHARGING FIREARM ON SCHOOL PROPERTY

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED
UNDER 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 for this proposed offense. However, in FY 2002/03 there were 21 convictions under N.C.G.S. 14-269.2(b). If, for example, there were two Class F convictions per year for the proposed offense (which represents 10% of the 21 convictions under N.C.G.S. 14-269.2(b)), 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 1554/SB 1190 - ASSAULT ON LAW OFFICER/EMERGENCY PERSONNEL

STATUTE

§ 14-34.9. Simple assault or affray on a law enforcement officer.

DESCRIPTION

A person who

1. commits
 - a. assault,
 - b. assault and battery, or
 - c. affray
2. on a law enforcement officer
3. while the officer is discharging or attempting to discharge his or her official duties.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

Simple assault, assault and battery, or affray are Class 2 misdemeanors.

Assault on an executive, legislative, or court officer is a Class I felony.

FINDINGS



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



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

DATE PREPARED: 6/11/04

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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 1554/SB 1190 - ASSAULT ON LAW OFFICER/EMERGENCY PERSONNEL (CONT.)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician.

DESCRIPTION

Subsection (a):

A person who

1. commits
 - a. assault or
 - b. affray
2. on any of the listed persons (emergency medical technician, medical responder, emergency department nurse, emergency department physician, firefighter)
3. while they are discharging or attempting to discharge their official duties.

OFFENSE CLASS

CURRENT: Class A1 misdemeanor.

PROPOSED: 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: 6/11/04

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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)**

STATUTE

**BILL NUMBER/SHORT TITLE: HB 1554/SB 1190 - ASSAULT ON LAW OFFICER/EMERGENCY
PERSONNEL (CONT.)**

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician.

DESCRIPTION

Subsection (b):

A person who

1. commits
 - a. assault or
 - b. affray
2. on any of the listed persons (emergency medical technician, medical responder, emergency department nurse, emergency department physician, firefighter)
3. while they are discharging or attempting to discharge their official duties and
4. a. inflicts serious bodily injury, or
 - b. uses a deadly weapon other than a firearm.

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 personal injury as Class H felonies.

FINDINGS

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



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



DATE PREPARED: 6/11/04

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**HOUSE BILL 1554/SENATE BILL 1190 -
ASSAULT ON LAW OFFICER/EMERGENCY PERSONNEL**

**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 1751 - FORTIFY AGAINST UNAUTHORIZED INSURANCE

STATUTE

§ 58-33-95. Agents personally liable; representing unlicensed company prohibited; penalty.

DESCRIPTION

A person or entity who

1. solicits, negotiates, or sells
2. insurance
3. in this State
4. for an unauthorized insurer and
5. knows the that the insurer is an unauthorized insurer.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

If the person or entity does not know that the insurer is an unauthorized insurer, the offense remains a Class 1 misdemeanor.

FINDINGS



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



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

DATE PREPARED: 6/11/04

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HOUSE BILL 1751 - FORTIFY AGAINST UNAUTHORIZED INSURANCE

**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 1763 - INCREASE REGULATION OF AMUSEMENT DEVICES

STATUTE

§ 14-309. Violation made criminal.

DESCRIPTION

A person who

1. knowingly
2. owns or possesses
3. a video gaming machine
4. which was not eligible for registration on October 1, 2000, under G.S. 14-306.1 (Types of machines and devices prohibited by law).

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

A violation of G.S. 14-306.1 involving the operation of five or more video gaming machines is a Class G felony.

FINDINGS

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

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

A Class G felony tends to result in serious property loss from the person or the person's dwelling. This offense does not appear to result in property loss.

DATE PREPARED: 6/11/04

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HOUSE BILL 1763 - INCREASE REGULATION OF AMUSEMENT DEVICES

**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 1054/HB 1512 - INCREASE METHAMPHETAMINE
PENALTIES**

STATUTE

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

DESCRIPTION

A person who

1. unlawfully distributes methamphetamine and
2. the ingestion of it causes the death of the user.

OFFENSE CLASS

CURRENT: Class F felony (involuntary manslaughter) or Class B2 felony (second degree murder).

PROPOSED: Class B2 felony (second degree murder).

ANALYSIS

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

Note: According to State v. Liner (98 N.C. App. 600 (1990)), this offense requires a showing of malice on the part of the defendant. The mere distribution of a controlled substance is not enough.

DATE PREPARED: 6/11/04

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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 1054/HB 1537 - INCREASE METHAMPHETAMINE PENALTIES

STATUTE

§ 90-95. Violations; penalties. (Controlled Substances Act)

DESCRIPTION

Subsection (b)(a1):

A person who

1. manufactures (except for packaging, repackaging, labeling, and relabeling)
2. methamphetamine.

OFFENSE CLASS

CURRENT: Class H felony (manufacture of Schedule II controlled substances).

PROPOSED: Class C felony.

ANALYSIS

The Sentencing Commission did not use the criteria in the classification of drug offenses.

This bill does not amend the trafficking offenses.

The manufacture of other Schedule II controlled substances remain Class H felonies.

The sale of methamphetamine is a Class G felony. The possession of methamphetamine is a Class I 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 drug offenses.

Note: The punishment for this offense, manufacturing less than 28 grams of methamphetamine, can be longer than the punishment for trafficking in methamphetamine by manufacturing 28 to 200 grams and trafficking in methamphetamine by manufacturing 200 to 400 grams.

DATE PREPARED: 6/11/04

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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 1054/HB 1510 - INCREASE METHAMPHETAMINE
PENALTIES**

STATUTE

§ 90-95. Violations; penalties. (Controlled Substances Act)

DESCRIPTION

Subsection (d1):

A person who

1. (a) possesses
(b) an immediate precursor chemical
(c) with intent to manufacture a controlled substance; or
2. (a) possesses or distributes
(b) an immediate precursor chemical
(c) knowing, or having reasonable cause to believe, that it will be used to manufacture a controlled substance.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: Class F felony.

ANALYSIS

The Sentencing Commission did not use the criteria in the classification of drug 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 drug offenses.

DATE PREPARED: 6/11/04

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SENATE BILL 1054/HOUSE BILLS 1512, 1537, 1510: INCREASE METHAMPHETAMINE PENALTIES

**ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING
[May 14, 2004]**

Section 1.

This section of the bill amends G.S. 14-17 to add “methamphetamine” to the list of controlled substances for which an overdose death can lead to a charge of second-degree murder.

It is not known how many homicide cases involve a methamphetamine overdose. In FY 2002/03, there were 199 convictions for second-degree murder. An active sentence was imposed for all convictions with an average minimum sentence of 174.2 months. Adding methamphetamine to the list of controlled substances for which an overdose death can lead to a charge of second-degree murder could have impact on the prison population given the mandatory active sentence and long sentence lengths imposed for Class B2 felony convictions.

Section 3.

This section of the bill reclassifies manufacture of methamphetamine from Class H to Class C (excluding the packaging and repackaging, labeling and relabeling of methamphetamine).

Scenario 1: The AOC has a general offense code for manufacture of Schedule II controlled substances but not a specific offense code for manufacture of methamphetamine. There were 26 convictions for manufacture or attempted manufacture of Schedule II controlled substances in FY 2002/03. Nine (35%) of these Class H felons received an active punishment with an average active sentence imposed of 7.6 months. Since the AOC has a specific offense code for manufacture cocaine, also a Schedule II controlled substance, this analysis assumes that all 26 convictions for manufacture or attempted manufacture of Schedule II controlled substances involved methamphetamine.

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

YEAR	ESTIMATED ADDITIONAL PRISON BEDS
2005/06	13
2006/07	35
2007/08	54
2008/09	79
2009/10	103
2010/11	129
2011/12	146
2012/13	157
2013/14	165
2014/15	171

NOTES:

- Assumes effective for crimes committed on or after 12/1/2004. Fiscal Year 2005/06 represents the first full year of impact due to the gap between the time a felony offense is committed and the offender is sentenced.
- The assumptions for number of active sentences and number of probation revocations assume the same percentages as found in FY 2002/03. Assumes no changes in judicial or prosecutorial behavior regarding convictions for this offense.
- There will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class H to a Class C.
- Assumes no deterrent or incapacitative effects.

Scenario 2: Based on information from the State Bureau of Investigation, an estimated 367 methamphetamine labs will be discovered in Calendar Year 2004. In addition, the SBI estimates that 10% (n=37) of discovered labs are abandoned. For purposes of providing an estimate of the possible short-term impact of this section of the bill, it is assumed in this scenario that each of the 330 methamphetamine labs discovered (accounting for the estimated 37 abandoned labs) would result in at least one charge for manufacture methamphetamine. Assuming that 29.3% of Class H charges result in Class H convictions, there would be an estimated 97 convictions resulting from the 330 discovered labs.¹ In FY 2002/03, 32.9% of offenders convicted of a Class H felony received an active punishment with an average estimated time served of 10.5 months. The remaining 67.1% of offenders convicted of a Class H felony received a non-active punishment. The revocation rate for these offenders was 49.5%. Under the current statute, if there were 97 convictions for the Class H offense per year, the combination of active sentences and probation revocations would result in the need for 28 prison beds the first year and 56 prison beds the second year. Under the proposal, manufacture methamphetamine would be reclassified to a Class C felony. Assuming that 23.8% of Class C charges result in Class C convictions, there would be an estimated 79 convictions resulting from the 330 charges for manufacture methamphetamine.² These offenders would face a mandatory active sentence with an average estimated time served of 99 months. If there were 79 convictions of this Class C offense per year, this bill would result in the need for 51 additional prison beds the first year and 104 additional prison beds the second year.

Scenario 3: In this scenario, it is assumed that each of the 330 methamphetamine labs discovered would result in at least one conviction. In FY 2002/03, 32.9% of offenders convicted of a Class H felony received an active punishment with an average estimated time served of 10.5 months. The remaining 67.1% of offenders convicted of a Class H felony received a non-active punishment. The revocation rate for these offenders was 49.5%. Under the current statute, if there were 330 convictions for the Class H offense per year, the combination of active sentences and probation revocations would result in the need for 95 prison beds the first year and 191 prison beds the second year. If this offense was reclassified to a Class C felony, the 330 convictions would face a mandatory active sentence with an average estimated time served of 99 months. If there were 330 convictions of this Class C offense per year, this bill would result in the need for 235 additional prison beds the first year and 476 additional prison beds the second year.

Section 3 Short-term Impact Summary

Scenario	Number of Convictions	Year 1 Estimate	Year 2 Estimate
Scenario 1: Current data on convictions	26	13	35
Scenario 2: 23.8% of charges lead to convictions	79	51	104
Scenario 3: 100% of charges lead to convictions	330	235	476

¹ THIS RATE IS BASED ON AN AOC ANALYSIS OF FELONY CHARGES BY OFFENSE CLASS AND RESULTING CONVICTIONS BY OFFENSE CLASS FOR CALENDAR YEAR 2003. THERE WERE 35,628 DEFENDANTS WITH A MOST SERIOUS CHARGE FOR A CLASS H FELONY. OF THESE 10,456 (29.3%) WERE CONVICTED OF A CLASS H FELONY AS THEIR MOST SERIOUS OFFENSE.

² THIS RATE IS BASED ON AN AOC ANALYSIS OF FELONY CHARGES BY OFFENSE CLASS AND RESULTING CONVICTIONS BY OFFENSE CLASS FOR CALENDAR YEAR 2003. THERE WERE 3,738 DEFENDANTS WITH A MOST SERIOUS CHARGE FOR A CLASS C FELONY. OF THESE, 888 (23.8%) WERE CONVICTED OF A CLASS C FELONY AS THEIR MOST SERIOUS OFFENSE.

SOURCE: NC SENTENCING AND POLICY ADVISORY COMMISSION, FY 2002/03 FELONY SIMULATION DATA

Section 4.

This section of the bill reclassifies possession of precursor chemicals from a Class H to Class F.

The AOC does not have a specific offense code for this offense. By scanning the free text codes, six convictions for this offense were found for FY 2002/03. Two (33%) of these Class H felons received an active punishment with an average active sentence imposed of 9.5 months. It is not known how many of these convictions involved methamphetamine. For purposes of analysis, it will be assumed that all six convictions involved methamphetamine. In FY 2002/03, 46.7% of offenders convicted of a Class F felony received an active punishment with an average estimated time served of 19.9 months. The remaining 53.3% of offenders convicted of a Class F felony received a non-active punishment. The revocation rate for these offenders was 41.4%. If, for example, there were 6 convictions for this offense per year punished as Class F felons instead of Class H felons, the combination of active sentences and probation revocations would result in the need for 1 additional prison bed the first year and 2 additional prison beds the second year. It should be noted that given the growing problem of manufacture of methamphetamine and the fact that the AOC does not have a specific offense code for this offense, historical data on the number of convictions for possession of precursor chemicals may be underestimated.

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 1391 - CHILD PORN/INTERNET

STATUTE

§ 14-468. Penalty. (Internet Child Pornography or Obscenity)

DESCRIPTION

An internet service provider who

1. fails to remove or disable access to
2. child pornography items
3. residing on or accessible through its service in a manner accessible to persons located within North Carolina
4. within five business days of being notified by the Attorney General according to statute.

PROPOSED OFFENSE CLASS

Class I felony for third or subsequent offense.

ANALYSIS

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

A first offense is a Class 2 misdemeanor punishable by a fine only. A second offense is a Class 1 misdemeanor punishable by a fine only.

FINDINGS



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



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

DATE PREPARED: 6/11/04

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SENATE BILL 1391 - CHILD PORN/INTERNET

**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 PUNISHMENT RANGE FOR A CRIME/CLASS
(PREPARED PURSUANT TO G.S. 164-43)**

BILL NUMBER/SHORT TITLE: SB 1407 - INJURE LAW OR FIRE OFFICER/METH OFFENSE

STATUTE

§ 90-95. Violations; penalties. (Controlled Substances Act)

DESCRIPTION

A person who

1. commits an offense under G.S. 90-95(a) (manufacture, sell, deliver, possess with intent to manufacture, sell or deliver, or possess a controlled substance) and
2. the substance is methamphetamine, and
3. a law enforcement officer or firefighter discharging his or her official duties
4. suffers serious bodily injury
5. as a result of the controlled substance offense.

PUNISHMENT RANGE

CURRENT (if applicable): Punished according to the classification of the offense as specified in the felony punishment chart (Classes G, H, and I).

PROPOSED: A felony one class higher than the felony committed.

ANALYSIS

G.S. 15A-1340.16(d)(6) contains an aggravating factor for when an offense was committed against or proximately caused serious injury to a present or former law enforcement officer,...., fireman,...., etc.

G.S. 14-69.3, arson or other unlawful burning that results in serious (bodily) injury to a firefighter or emergency medical technician, is a Class E felony.

FINDINGS

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

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

DATE PREPARED: 6/11/04

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SENATE BILL 1407 - INJURE LAW OR FIRE OFFICER/METH OFFENSE

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

Analysis not available 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 1425 - FETAL MURDER

STATUTE

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

DESCRIPTION

A person who

1. engages in conduct that violates any of the provisions of subsection (a) (first and second degree murder)
2. with respect to the death of a pregnant woman, and
3. thereby causes the death of a child who is in utero at the time the conduct takes place.

PROPOSED OFFENSE CLASS

Class A for first degree murder, Class B2 for second degree murder.

ANALYSIS

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

Conduct relating to an abortion or any medical treatment is excluded.

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: 6/11/04

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SENATE BILL 1425 - FETAL MURDER

**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 Classification Criteria is not applicable regarding the following proposed misdemeanor bills. The projected impact of these bills is discussed following.

BILL NUMBER/SHORT TITLE: HB 1343 - MOPED ID TAGS

STATUTE: § 20-71.6. Moped identification tags.

PROPOSED OFFENSE CLASS: Class 3 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1351 - LOCAL OPTION EDUCATION LOTTERY

STATUTE: § 143D-7. Misdemeanor violations of lottery laws.

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: HB 1373/SB 1077 - INCREASE PENALTY-TRANSIT OPERATOR ASSAULT

STATUTE: § 14-33(c)(7). Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments. (Assault on a public transit operator).

CURRENT OFFENSE CLASS: Class 2 misdemeanor (simple assault).

PROPOSED OFFENSE CLASS: Class A1 misdemeanor.

ANALYSIS: The Sentencing Commission does not have specific criteria for classifying misdemeanor offenses. However, in 1994 the Sentencing Commission recommended the creation of misdemeanor Class A1 for violent assaultive misdemeanors. The General Assembly enacted that recommendation.

BILL NUMBER/SHORT TITLE: HB 1531 - BAN PIGEON SHOOTS

STATUTE: § 14-361.2. Pigeon shoots.

PROPOSED OFFENSE CLASS: Class 1 misdemeanor.

BILL NUMBER/SHORT TITLE: SB 1357 - INCREASE PENALTY FOR THREATS TO CHILDREN

STATUTE: § 14-277.1. Communicating threats. (The victim is a child under 13, the offender is 18 or older)

CURRENT OFFENSE CLASS: Class 1 misdemeanor (communicating threats).

PROPOSED OFFENSE CLASS: Class A1 misdemeanor.

ANALYSIS: The Sentencing Commission does not have specific criteria for classifying misdemeanor offenses. However, in 1994 the Sentencing Commission recommended the creation of misdemeanor Class A1 for violent assaultive misdemeanors. The General Assembly enacted that recommendation.

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.

NC SENTENCING AND POLICY ADVISORY COMMISSION

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