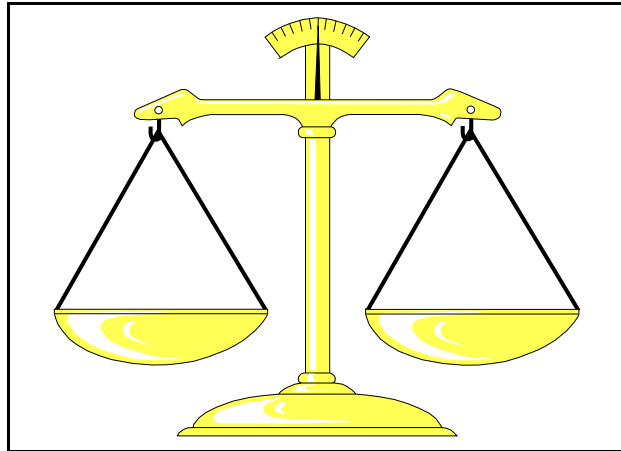


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #1 ON PROPOSED LEGISLATION
PURSUANT TO G.S. 164-43***

***SUBMITTED TO THE 2005 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
APRIL 2005***

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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 March 15, 2005. 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, 2005.

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 March 18, 2005.

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 3 - 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.

This provision is identical to a provision in HB 1351 which the Commission reviewed in June, 2004. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 3/16/05

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 3 - 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 50 - STREET GANG PREVENTION ACT

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (a):

A person who

1. is employed by or associated with a criminal street gang (defined as any organization, association, or group of three or more persons, whether formal or informal, which engages in a pattern of criminal gang activity as defined by statute)
2. conducts or participates in the criminal street gang
3. through a pattern of criminal gang activity (defined as the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit at least two of the listed offenses, provided that at least one of these offenses occurred after December 1, 2005, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal gang activity).

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.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS



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



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

A Class E felony tends to result in serious personal injury. This offense does not always result in serious personal injury. This offense would be consistent with a Class H felony. The Sentencing Commission classified offenses which reasonably tend to or do result in significant societal injury as Class H felonies.

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (b):

A person who

1. acquires or maintains, directly or indirectly,
2. through a pattern of criminal gang activity or proceeds derived therefrom
3. any interest in or control of any real or personal property of any nature, including money.

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.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS



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



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

A Class E felony tends to result in serious personal injury. This offense does not always result in serious personal injury. This offense would be consistent with a Class H felony. The Sentencing Commission classified offenses which reasonably tend to or do result in significant societal injury as Class H felonies.

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (c):

Any person who

1. occupies a position of organizer, supervisory position, or any other position of management with regard to a criminal street gang, and
2. engages in, directly or indirectly, or conspire to engage in
3. a pattern of criminal gang activity.

PUNISHMENT RANGE

CURRENT: Punished according to the class of the offense and the offender's prior record or conviction level.

PROPOSED: Punished by imprisonment for an additional 10 years which shall be served consecutively to any other sentence imposed (a separate sentence).

ANALYSIS

It is not clear from the bill whether this section is intended to be a new offense or a sentence enhancement.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with G.S. 164-41.

FINDINGS



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



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

Note: There is currently an aggravating factor that applies to offenders who occupy a position of leadership (G.S. 15A-1340.16(d)(1)).

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (d):

A person who

1. causes, encourages, solicits, or coerces
2. another
3. to participate in a criminal street gang.

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.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

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 result in serious property loss from the person or the person's dwelling. The "causes, encourages, solicits" portion of this offense would be consistent with a Class I felony. The Sentencing Commission classified offenses which reasonably tend to or do result in societal injury as Class I felonies. The "coerces" portion of this offense would be consistent with a Class H felony. The Sentencing Commission classified offenses which reasonably tend to or do result in significant societal injury as Class H felonies.

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (e):

A person who

1. communicates, directly or indirectly,
2. with another
3. a threat of injury or damage to the person or property of the other person or to any associate or relative of the other person
4. with the intent to deter the person from assisting a member or associate of a criminal street gang to withdraw from such gang.

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.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.18. Participation in criminal street gang activity prohibited.

DESCRIPTION

Subsection (f):

A person who

1. communicates, directly or indirectly,
2. with another
3. a threat of injury or damage to the person or property of the other person or to any associate or relative of the other person
4. With the intent to punish or retaliate against the person for having withdrawn from a criminal street gang.

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.

This provision is identical to a provision in HB 732 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with the Offense Classification Criteria.

FINDINGS

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

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

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-50.19. Enhanced offense for criminal gang activity.

DESCRIPTION

A person who

1. is convicted of an offense and
2. that offense is committed for the benefit of, at the direction of, or in association with, any criminal street gang.

PUNISHMENT RANGE

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

PROPOSED: Punished one class higher than the class of the offense committed.

ANALYSIS

FINDINGS

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

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

Note: There is currently an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16(d)(2a)).

DATE PREPARED: 3/16/05

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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 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 14-34.9. Discharging a firearm from within an enclosure.

DESCRIPTION

A person who

1. willfully and wantonly
2. discharges or attempts to discharge
3. a firearm
4. from within any building, structure, motor vehicle, aircraft, watercraft, or other enclosure
5. toward a person or persons not within that enclosure.

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. 14-34.1, Discharging a firearm into occupied property, is a Class E felony.

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

BILL NUMBER/SHORT TITLE: HB 50 - STREET GANG PREVENTION ACT (cont.)

STATUTE

§ 15A-1340.16B. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony that was committed for the benefit of, at the direction of, or in association with, any criminal street gang, and the defendant possessed, displayed, or discharged a firearm during the commission of the felony.

DESCRIPTION

Notwithstanding G.S. 15A-1340.16A (the current firearm enhancement):

A person who

1. is convicted of a Class A, B1, B2, C, D, or E felony and
2. committed that felony for the benefit of, at the direction of, or in association with any criminal street gang, and
3. possessed, displayed, or discharged a firearm during the commission of the felony.

PUNISHMENT RANGE

CURRENT (if applicable): If any person is convicted of a Class A through E felony and they used, displayed, or threatened to use or display a firearm, their minimum sentence may be increased by 60 months. The enhancement does not apply if the evidence of the use, display, or threat to use or display the firearm is needed to prove an element of the felony or if the person is not sentenced to an active sentence.

PROPOSED: For possession, an additional minimum term of 60 months; for displaying, an additional minimum term of 84 months; for discharging, an additional minimum term of 120 months. This sentence must be active and consecutive to any other sentence being served. The enhancement applies regardless of whether the evidence is also necessary to prove an element of the felony or the person received an intermediate punishment.

ANALYSIS

Only applies to persons associated with a criminal street gang and it includes discharging a firearm.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 50 - STREET GANG PREVENTION ACT

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

Analysis has not been completed 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 217 [v.2] - DRIVING FROM/LEAVING SCENE OF ACCIDENT

STATUTE

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

DESCRIPTION

Amends subsection (a): If a driver knows or reasonably should know that the vehicle he is operating is involved in an accident or collision and the accident or collision has resulted in injury or death to any person, he shall immediately stop at the scene.

1. The driver and the passengers shall remain with the vehicle at the scene of the accident until a law-enforcement officer completes the investigation or authorizes the driver and passengers to leave and the vehicle to be removed.
2. Prior to completion of the investigation or authorization to leave:
 - a. the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene, and
 - b. the passenger may not remove or facilitate the removal of the vehicle from the scene.
3. The driver and the passengers may leave the scene to call a law-enforcement officer or for medical assistance or treatment, but must return with the vehicle to the scene within a reasonable period of time.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The current offense is a Class H felony. This bill makes similar changes to subsection (c), which is a Class 1 misdemeanor.

FINDINGS



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



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

DATE PREPARED: 3/16/05

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 217 [v.2]: DRIVING FROM/LEAVING SCENE OF ACCIDENT

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

G.S. 20-166(a)

G.S. 20-166(a) currently prohibits drivers from leaving the scene of an accident involving personal injury. The proposed amendment adds passengers as potential defendants. In FY 2003/04, there were 44 convictions under G.S. 20-166(a), which is a Class H felony. It is not known how many additional offenders might be sentenced as a result of amending this statute to include passengers as potential defendants. If, for example, there were 3 additional Class H felony 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.

In addition, the proposed bill creates a new Class H offense for facilitating the removal of the vehicle from the scene by drivers or passengers. The Sentencing Commission does not have any historical data from which to estimate the impact of this proposed offense on the prison population. It is not known how many offenders might be sentenced for this new offense. If, for example, there were 3 additional Class H felony 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.

G.S. 20-166(c)

G.S. 20-166(c) currently prohibits drivers from leaving the scene of an accident involving property damage. The proposed amendment adds passengers as potential defendants. In FY 2003/04, there were 791 convictions under G.S. 20-166(c), which is a Class 1 misdemeanor. It is also possible that this conduct has been convicted under G.S. 20-166(c1). In FY 2003/04, there were 288 convictions under G.S. 20-166(c1), which is also a Class 1 misdemeanor. It is not known how many additional offenders might be sentenced as a result of amending this statute to include passengers as potential defendants. In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. If there is a large number of additional convictions, the impact on local jail populations could be substantial.

In addition, the proposed bill creates a new Class 1 misdemeanor offense for facilitating the

removal of the vehicle from the scene by drivers or passengers. The Sentencing Commission does not have any historical data from which to estimate the impact of this proposed offense on the prison population. It is not known how many offenders might be sentenced for this offense. In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, additional Class 1 misdemeanor convictions would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 238/SB 223 - PUBLIC CONFIDENCE IN ELECTIONS

STATUTE

§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.

DESCRIPTION

Subsection (a):

Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

- (1) Place a copy of all source code in escrow.
- (2) Notify the State Board of Elections of any change in source code or any change in the foundation operating system.
- (3) Make accessible for review all relevant source code.
- (4) The CEO of the vendor shall sign a sworn affidavit that the source code in escrow is the same being used in its voting systems in this State.
- (5) Notify the State Board of Elections and the county board of elections of any county using its voting system of any defect in the same system known to have occurred anywhere.
- (6) Maintain an office in North Carolina with staff to service the contract.

Subsection (b):

A vendor who

1. willfully and fraudulently
2. violates any of the duties in subsection (a).

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.

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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 238/SB 223 - PUBLIC CONFIDENCE IN ELECTIONS (cont.)

STATUTE

§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.

DESCRIPTION

Subsection (b):

A vendor who

1. substitutes source code
2. into an operating voting system
3. without notification as provided by subdivision (a)(2) of this section.

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.

Note: This section would also be consistent with the Offense Classification Criteria for a Class H felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant societal injury as Class H felonies.

DATE PREPARED: 3/16/05

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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 238/SB 223 - PUBLIC CONFIDENCE IN ELECTIONS (cont.)

STATUTE

§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

DESCRIPTION

Subsection (c):

Any person who is responsible for the misuse or unauthorized release of the source code held in escrow.

PROPOSED OFFENSE CLASS

Subject to the provisions of G.S. 14-75.1, Larceny of secret technical processes, a Class H felony.

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 or the breach of trust, formal or informal, as Class H felonies.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 238/SB 223: PUBLIC CONFIDENCE IN ELECTIONS

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

G.S. 163-165.9A

Since the proposed section 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. The offenses contained in certain subsections may be committed by either a corporate entity or an individual; however, any potential prison impact is based on the conviction of individuals. If, for example, there were ten Class I convictions under this proposed section 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.

G.S. 163-165.7

There were no convictions under G.S. 14-75.1 in FY 2003/04. It is not known how many additional offenders might be sentenced as a result of the broadening of G.S. 14-75.1 to provide trade secret protection to voting system source code. 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.

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 288/SB 1142 - MV MOVE-OVER LAW CHANGES

STATUTE

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

DESCRIPTION

A driver of any vehicle who

- (b) follows closer than one block any fire apparatus traveling in response to a fire alarm or drives into or park within one block of where a fire apparatus has stopped to answer an alarm.
- (c) (Outside the corporate limits of any city or town) follows any fire apparatus traveling in response to a fire alarm closer than 400 feet or drives into or park such vehicle within a space of 400 feet from where fire apparatus has stopped in answer to a fire alarm.
- (d) drives a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or blocks a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.
- (e) other than one on official business, parks and leaves standing such vehicle within 100 feet of police or fire department vehicles, public or private ambulances, or rescue squad emergency vehicles which are engaged in the investigation of an accident or engaged in rendering assistance to victims of such accident.
- (f) passes an emergency vehicle that is stopped or standing within 12 feet of the roadway must move to the lane farthest away or slow down.
- (h) a person violates subsections (b) through (f) and causes damage to property in the immediate area of the stationary authorized emergency vehicle.

PROPOSED OFFENSE CLASS

Class I felony punishable by a fine of not more than \$500 or imprisonment, or both. (Subsections (b) through (f) are currently infractions. The bill raises them to Class 1 misdemeanors.)

ANALYSIS

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

Sentence indicates fine or imprisonment or both. Imprisonment is not authorized for all prior record levels in Class I under structured sentencing.

FINDINGS



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



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

Note: The proposed punishment is inconsistent with structured sentencing. Imprisonment is not authorized for all prior record levels in Class I under structured sentencing (subsection (g) contains the same inconsistency for Class 1 misdemeanor 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 288/SB 1142 - MV MOVE-OVER LAW CHANGES (cont.)

STATUTE

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

DESCRIPTION

(i) a person violates subsections (b) through (f) of this section and causes injury to a police officer, a firefighter, an emergency vehicle removal operator, an Incident Management Assistance Patrol member, or any other emergency response person in the immediate area of the stationary authorized emergency vehicle.

PROPOSED OFFENSE CLASS

Class H felony punishable by a fine of not more than \$5000 or imprisonment, or both. (Subsections (b) through (f) are currently infractions. The bill raises them to Class 1 misdemeanors.)

ANALYSIS

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

Sentence indicates fine or imprisonment or both.

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 288/SB 1142 - MV MOVE-OVER LAW CHANGES (cont.)

STATUTE

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

DESCRIPTION

(j) a person violates subsections (b) through (f) of this section and causes or is the proximate cause of the death of a police officer, a firefighter, an emergency vehicle removal operator, an Incident Management Assistance Patrol member, or any other emergency response person in the immediate area of the stationary authorized emergency vehicle.

PROPOSED OFFENSE CLASS

Class F felony punishable by a fine of not more than \$10000 or imprisonment, or both. (Subsections (b) through (f) are currently infractions. The bill raises them to Class 1 misdemeanors.)

ANALYSIS

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

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

Sentence indicates fine or imprisonment or both.

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.

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

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 288/SB 1142: MOVE-OVER LAW CHANGES

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

G.S. 20-157(b)-(f)

This bill reclassifies infractions in these subsections to Class 1 misdemeanors. The North Carolina Sentencing and Policy Advisory Commission does not maintain data on infractions. In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, the reclassification of infractions to offenses punishable as Class 1 misdemeanors under this proposed bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known. It is not known how many additional convictions may result from the proposed expansion of subsection (f) to include “any public service vehicle.”

G.S. 20-157(h)

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 offense. If, for example, there were ten Class I 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.

G.S. 20-157(l)

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 offense. If, for example, there were 3 additional convictions for the Class H felony 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.

G.S. 20-157(j)

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 offense. 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 three 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 423 - HABITUAL MISD. LARCENY/FELONY

STATUTE

§ 14-86.2. Habitual misdemeanor larceny.

DESCRIPTION

A person who

1. is 18 years of age or older
2. commits misdemeanor larceny under G.S. 14-72(a)
3. and has been convicted of five or more prior misdemeanor larceny convictions.

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 the taking or removing of property as Class H felonies.

The proposed statute limits prior convictions used to establish the offense to one per session of district court or week of superior court. The proposed statute excludes convictions for this offense from being used for habitual felon purposes.

This provision is identical to HB 108 which the Commission reviewed in March, 2003. The Commission found that provision to be consistent with the Offense Classification Criteria.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 423: HABITUAL MISD. LARCENY/FELONY

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

The Sentencing Commission does not have any data to indicate what proportion of offenders would be convicted as Class H offenders under N.C.G.S. 14-86.2.¹ Therefore, it is not known how many offenders might be sentenced under this bill.

During FY 2003/04, there were 14,487 misdemeanor convictions under N.C.G.S. 14-72(a), which includes convictions for misdemeanor larceny (14,393), misdemeanor larceny of motor vehicle (20), and aid and abet misdemeanor larceny (74). Of these convictions, 992 were for offenders 16-17 years of age at sentencing, 13,189 were for offenders 18 years of age or older at sentencing, and the remainder had missing values for age. Of those identified as 18 years of age or older at sentencing, 2,810 fell in Prior Conviction Level III.² Thus, if a large number of offenders would be convicted as Class H offenders instead of Class 1 offenders, the impact could be substantial.

If, for example, there were three convictions that moved from a Class 1 misdemeanor to a Class H felony, the combination of active sentences and probation revocations would result in the need for one prison bed the first year and two prison beds the second year.

If it is assumed that 141 convictions (or about five percent of the 2,810 convictions for offenders 18 years of age or older who were sentenced in Prior Conviction Level III) had five or more prior convictions for misdemeanor larceny offenses and would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 42 prison beds the first year and 85 prison beds the second year.

If it is assumed that 281 convictions (or ten percent of the 2,810 convictions for offenders 18 years of age or older who were sentenced in Prior Conviction Level III) had five or more prior convictions for misdemeanor larceny offenses and would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 83 prison beds the first year and 169 prison beds the second year.

If it is assumed that 1,405 convictions (or one-half of the 2,810 convictions for offenders 18 years of age or older who were sentenced in Prior Conviction Level III) had five or more prior convictions for misdemeanor larceny offenses and would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 413 prison beds the first year and 841 prison beds the second year.

¹ While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses that are used to calculate the number of prior record/conviction points.

² Prior Conviction Level III requires five or more prior convictions. Under current law only one offense in a single session of District Court or a week of Superior Court may be counted when determining prior conviction level.

If it is assumed that all 2,810 convictions for offenders 18 years of age or older who were sentenced in Prior Conviction Level III had five or more prior convictions for misdemeanor larceny offenses and would be convicted as Class H felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 825 prison beds the first year and 1,683 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 490/SB 591 - FALSE REPORT/DESTRUCTIVE DEVICE

STATUTE

§ 14-69.1. Making a false report concerning a destructive device.

DESCRIPTION

Subsection (a):

A person who

1. by any means of communication to any person or group of persons, makes a report,
2. knowing or having reason to know the report is false,
3. that there is located in or in sufficient proximity to cause damage to any building, house or other structure whatsoever or any vehicle, aircraft, vessel or boat
4. any device designed to destroy or damage the building, house or structure or vehicle, aircraft, vessel or boat by explosion, blasting or burning.

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 current offense is a Class H felony.

G.S. 14-69.2, Perpetrating hoax by use of false bomb or other device, is a Class H felony, a Class G felony if it is the second conviction within five years of the first conviction.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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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 490/SB 591 - FALSE REPORT/DESTRUCTIVE DEVICE (cont.)

STATUTE

§ 14-69.1. Making a false report concerning a destructive device.

DESCRIPTION

Subsection (b):

A person who

1. by any means of communication to any person or group of persons, makes a report,
2. knowing or having reason to know the report is false,
3. that there is located in or in sufficient proximity to cause damage to any public building
4. any device designed to destroy or damage the public building.

PROPOSED OFFENSE CLASS

Class H felony, Class G felony if it is the second conviction within five years of the first conviction.

ANALYSIS

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

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

The current offense is a Class H felony, Class G felony if it is the second conviction within five years of the first conviction.

G.S. 14-69.2, Perpetrating hoax by use of false bomb or other device, is a Class H felony, a Class G felony if it is the second conviction within five years of the first conviction.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 490/SB 591: FALSE REPORT/DESTRUCTIVE DEVICE

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

G.S. 14-69.1(a)

There were 7 Class H convictions under G.S. 14-69.1(a) during FY 2003/04. It is not known how many additional convictions may result from the proposed broadening of the current statute. 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.

G.S. 14-69.1(c)

There were 12 Class H convictions and no Class G convictions under G.S. 14-69.1(c) during FY 2003/04. It is not known how many additional convictions may result from the proposed broadening of the current statute. 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. If, for example, there were two additional Class G 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.

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 611/SB 486 - RACHEL'S LAW

STATUTE

§ 14-34.1. Discharging certain barreled weapons or a firearm into occupied property.

DESCRIPTION

Current offense (subsection (a)):

Any person who

1. willfully or wantonly discharges or attempts to discharge:
 - (a) Any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second; or
 - (b) A firearm
2. into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure
3. while it is occupied.

New element:

A person who violates subsection (a) of this section by discharging a weapon described in subsection (a) of this section

1. into a dwelling or
2. any vehicle, aircraft, watercraft, or other conveyance that is traveling upon the public streets or highways of this State or in a public vehicular area, or is traveling upon any waterway or in any airspace within this State.

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.

The current offense is a Class E felony.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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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 611/SB 486 - RACHEL’S LAW (cont.)

STATUTE

§ 14-34.1. Discharging certain barreled weapons or a firearm into occupied property.

DESCRIPTION

New element:

A person who violates subsection (a) of this section by discharging a weapon described in subsection (a) of this section

1. into a dwelling or
2. any vehicle, aircraft, watercraft, or other conveyance that is traveling upon the public streets or highways of this State or in a public vehicular area, or is traveling upon any waterway or in any airspace within this State, and
3. the violation results in serious injury to any person.

PROPOSED OFFENSE CLASS

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 current offense is a Class E felony.

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

G.S. 14-33(c)(1), Assault inflicting serious injury or using a deadly weapon, is a Class A1 misdemeanor.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 611/SB 486 - RACHEL'S LAW

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

G.S. 14-34.1(c)

In FY 2003/04, there were 89 convictions under G.S. 14-34.1 (discharging certain barreled weapons or a firearm into occupied property), which is a Class E felony. It is not known how many of the convictions under G.S. 14-34.1 involved a dwelling or a traveling vehicle and would, therefore, become Class C convictions 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 2003/04 the average estimated time served for an offender convicted of a Class C offense was 95 months. Class C felonies have a long-term effect on the prison population due to the long sentences imposed, which result in a "stacking" effect. 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. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

G.S. 14-34.1(d)

In FY 2003/04, there were 453 convictions under G.S. 14-32(b) (assault with a deadly weapon inflicting serious injury), which is a Class E felony. It is not known how many of these convictions would meet the elements of G.S. 14-34.1(c) and would become Class B2 convictions under the proposed bill. It is also not known how many of the 89 convictions under G.S. 14-34.1 involved a dwelling or traveling vehicle and resulted in serious injury. Therefore, it is not known how many of these convictions would become Class B2 convictions under the proposed bill.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class B2 offenders are required to receive an active sentence. In FY 2003/04 the average estimated time served for an offender convicted of a Class B2 offense was 189 months. Class B2 felonies have a long-term effect on the prison population due to the long sentences imposed, which result in a "stacking" effect. 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. Due to the mandatory active sentences and long sentence lengths, additional convictions would continue to stack up over the 10-year projection period.

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 614 - CHILD SOLICITATION BY COMPUTER

STATUTE

§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.

DESCRIPTION

A person who is 16 years of age or older

1. knowingly, with the intent to commit an unlawful sex act,
2. entices, advises, coerces, orders, or commands,
3. by means of a computer,
4. a child who is less than 16 years of age and at least 3 years younger than the defendant,
5. to meet with the defendant or any other person
6. for the purpose of committing an unlawful sex act.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

FINDINGS

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

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

DATE PREPARED: 3/16/05

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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 614 - CHILD SOLICITATION BY COMPUTER (cont.)

STATUTE

§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.

DESCRIPTION

A person who is 16 years of age or older

1. knowingly, with the intent to commit an unlawful sex act,
2. entices, advises, coerces, orders, or commands,
3. by means of a computer,
4. someone whom the person believes to be under the age of 16
5. to meet with the defendant or any other person
6. for the purpose of committing an unlawful sex act.

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.

FINDINGS



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



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

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 614: CHILD SOLICITATION BY COMPUTER

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

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-202.3. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. If there were 10 Class I convictions under the current statute that were reclassified to Class E (as proposed), this would result in the need for four additional prison beds the first year and 10 additional prison beds the second year.

The proposed bill also creates a new offense. The Sentencing Commission does not have any historical data from which to estimate the impact of this proposed offense on the prison population. It is not known how many offenders might be convicted and sentenced for this proposed offense. If, for example, there were two Class E 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 three 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: SB 61 - FELONY DEATH/SERIOUS INJURY BY VEHICLE

STATUTE

§ 20-141.4 (a3). Felony Serious Injury by Vehicle.

DESCRIPTION

A person who

1. unintentionally
2. causes serious injury to another
3. while driving while impaired
4. which proximately causes that serious injury.

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.

This provision is identical to a provision in SB 687 which the Commission reviewed in April, 2003. The Commission found that provision to be consistent with the Offense Classification Criteria.

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

BILL NUMBER/SHORT TITLE: SB 61 - FELONY DEATH/SERIOUS INJURY BY VEHICLE (cont.)

STATUTE

§ 20-141.4(b). Felony death by vehicle.

DESCRIPTION

A person who:

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

OFFENSE CLASS

CURRENT: Class G felony.

PROPOSED: Class D felony.

ANALYSIS

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

This provision is identical to a provision in SB 687 which the Commission reviewed in April, 2003. 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.

Note: Involuntary Manslaughter, G.S. 14-18, is a Class F felony. Voluntary Manslaughter, G.S. 14-18, is a Class D felony.

DATE PREPARED: 3/16/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 61: FELONY DEATH/SERIOUS INJURY BY VEHICLE

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

Felony Death by Vehicle

This bill reclassifies Felony Death by Vehicle from a Class G felony to a Class D felony (*see* attached impact projection). There were 35 convictions for this offense in FY 2003/04.

Instead of being convicted of Felony Death by Vehicle, offenders proximately causing a death during commission of a Driving While Impaired offense can be convicted of Involuntary Manslaughter (G.S. 14-18), a Class F felony, under current law. There were 83 convictions for Involuntary Manslaughter in FY 2003/04. The Sentencing Commission's felony data does not contain information on how many of these convictions involved offenders proximately causing a death during commission of a Driving While Impaired offense so it is not possible to determine how many of these offenders would be convicted under Felony Death by Vehicle if it were classified more seriously than Involuntary Manslaughter.

Felony Serious Injury by Vehicle

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 offense. If, for example, there were two Class E 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 three additional prison beds the second year.

Offenders eligible for prosecution under the new offense currently may be convicted of Assault with a Deadly Weapon Inflicting Serious Injury (G.S. 14-32(b), a Class E felony) or Assault Inflicting Serious Injury (G.S. 14-33(c)(1), a Class A1 misdemeanor). It is also possible that offenders eligible for prosecution under the new offense could be convicted of Assault with a Deadly Weapon (G.S. 14-33(c)(1), a Class A1 misdemeanor) as a reduction in charge from Assault with a Deadly Weapon Inflicting Serious Injury. In FY 2003/04 there were 453 convictions for Assault with a Deadly Weapon Inflicting Serious Injury, 871 convictions for Assault Inflicting Serious Injury, and 1,397 convictions for Assault with a Deadly Weapon. The Sentencing Commission's felony and misdemeanor data do not contain information on how many of these convictions involved injury proximately caused by a Driving While Impaired offense.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 61: FELONY DEATH/SERIOUS INJURY BY VEHICLE

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

Proposal Modeled: Reclassifies Felony Death by Vehicle from a Class G felony to a Class D felony.

FISCAL YEAR	ESTIMATED ADDITIONAL PRISON BEDS
2006/07	12
2007/08	41
2008/09	70
2009/10	102
2010/11	134
2011/12	155
2012/13	163
2013/14	169
2014/15	171
2015/16	175

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. The assumptions for active sentences and probation revocations assume the same percentages as found in FY 2003/04 for Class D convictions. Assumes no changes in judicial or prosecutorial behavior regarding convictions for this offense.

3. There will be some impact on Post-Release Supervision caseloads as a result of reclassifying this offense from a Class G to a Class D.

4. 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 200 - 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.

This provision is identical to a provision in SB 1425 which the Commission reviewed in June, 2004. 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: 3/16/05

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 200: FETAL MURDER

**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 and convicted for the proposed offense.

First Degree Murder

In FY 2003/04 there were 101 convictions for First Degree Murder (Class A). Offenders convicted of First Degree Murder may receive either a death sentence or life without parole. Of the 101 convictions for First Degree Murder in FY 2003/04, 7 received a death sentence and 94 received life without parole.

Under the proposed bill, the separate offense for causing the death of a child who is in utero at the time the conduct takes place would result in no additional impact on the prison system. The sentence for the proposed separate offense would be served concurrent with or consecutive to the sentence for First Degree Murder of the pregnant woman.

Second Degree Murder

In FY 2003/04 there were 181 convictions for Second Degree Murder (Class B2). Sentence lengths for Class B2 felons range from 94 months (lowest sentence in Prior Record Level I) to 392 months (highest sentence in Prior Record Level VI). In FY 2003/04, the average estimated time served for a Class B2 felon was 189 months.

Under the proposed bill, the separate offense for causing the death of a child who is in utero at the time the conduct takes place would not result in any short-term impact (i.e., within the ten-year projection period). The proposed bill would have long-term impact if the sentence for the proposed separate offense would be served consecutive to the sentence for Second Degree Murder of the pregnant woman.

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 428 - NO LASERS POINTED AT PLANES

STATUTE

§ 14-282.1. Unauthorized laser illumination of an aircraft.

DESCRIPTION

Any person who

1. intentionally and without legal authorization,
2. illuminates and aircraft with a laser
3. while the aircraft is taking off, landing, or in flight.

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.

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 428: NO LASERS POINTED AT PLANES

**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 under the proposed bill. 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: SB 472 - CHILD EXPLOITATION PREVENTION ACT

STATUTE

§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.

DESCRIPTION

A person who is 16 years of age or older

1. knowingly, with the intent to commit an unlawful sex act,
2. entices, advises, coerces, orders, or commands,
3. by means of a computer,
4. a person the perpetrator believes to be a child who is less than 16 years of age and at least 3 years younger than the defendant,
5. to meet with the defendant or any other person
6. for the purpose of committing an unlawful sex act.

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.

The current offense, which involves an actual child, is a Class I felony.

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 472: CHILD EXPLOITATION PREVENTION ACT

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

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 14-202.3. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

The proposed bill creates a new offense. The Sentencing Commission does not have any historical data from which to estimate the impact of this proposed offense on the prison population. It is not known how many offenders might be convicted and sentenced for this proposed offense. If, for example, there were ten Class I 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.

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 477/HB 891 - MASTER KEYS/LOCK-PICKING DEVICES
REGULATED.**

STATUTE

§ 14-56A. Preparation to commit breaking or entering into motor vehicles.

DESCRIPTION

Subsection (b):

Any person who

1. with intent to commit any felony, larceny, or unauthorized use of a motor propelled conveyance,
2. is found to have in their possession, without lawful excuse,
3. Any motor vehicle master key or other motor vehicle lock picking device.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

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

**BILL NUMBER/SHORT TITLE: SB 477/HB 891 - MASTER KEYS/LOCK-PICKING DEVICES
REGULATED.**

STATUTE

§ 14-56A. Preparation to commit breaking or entering into motor vehicles.

DESCRIPTION

Subsection (c):

Any person who

1. Buys, sells, or transfers
2. A motor vehicle master key, manipulative key or device, key-cutting device lock pick or lock-picking device or hot wire, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS

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

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

Note: This section would be consistent with the Offense Classification Criteria if it included the element of intending to commit a crime.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 477/HB 891: MASTER KEYS/LOCK-PICKING DEVICES REGULATED

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

G.S. 14-56A(b)

Since the proposed 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. If, for example, there were ten Class I 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 three additional prison beds the second year.

In FY 2003/04, there were 586 convictions for Breaking or Entering a Motor Vehicle (Class I), 332 convictions for Felony Larceny of Motor Vehicle (Class H), 1,466 convictions for Unauthorized Use of a Motor Vehicle (Class 1), and 20 convictions for Misdemeanor Larceny of Motor Vehicle (Class 1). It is not known how many of these convictions involved the use of a motor vehicle master key or other motor vehicle lock-picking device. If a large number of the misdemeanor convictions were to become Class I felony convictions due to the use of a motor vehicle master key or other motor vehicle lock-picking device, the impact on the prison system could be substantial.

G.S. 14-56A(c)

Since the proposed 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. If, for example, there were ten Class I 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 three additional prison beds the second year.

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 485 - HATE CRIMES/MATTHEW SHEPARD

STATUTE

§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with animosity based upon ethnicity, gender, age, sexual orientation, or disability; punishment of felony committed with animosity based upon ethnicity, gender, age, sexual orientation, or disability.

DESCRIPTION

Subsection (d):

Applies to any felony that is committed because of the victim's real or perceived race, color, religion, nationality, gender, sexual orientation, disability, age, or country of origin.

PUNISHMENT RANGE

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

PROPOSED: Punished at the sentencing level (prior record level?) that is one level higher than that authorized by the offender's prior record.

ANALYSIS

The current misdemeanor enhancement (subsection (c)) raises Class 2 and 3 misdemeanors to Class 1, and Class A1 and 1 misdemeanors to Class I. There is no felony provision.

This provision is identical to a provision in SB 736 which the Commission reviewed in April, 2003. The Commission found that provision to be inconsistent with G.S. 164-41.

FINDINGS



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



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

Note: There is currently an aggravating factor that applies to offenses committed against a victim because of the victim's race, color, religion, nationality, or country of origin. This factor does not include gender, sexual orientation, disability, or age (G.S. 15A-1340.16(d)(17))

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 485: HATE CRIMES/MATTHEW SHEPARD

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

The bill amends the current hate-crime statutes by expanding the protected victim groups to include gender, sexual orientation, disability, and age, in addition to the current protected groups of race, color, religion, nationality, and country of origin. The bill expands the definition of hate crimes to include those committed because of a victim’s “real or perceived” membership in a protected group.

The SBI provides information about hate crimes in its annual report *Crime in North Carolina*. The SBI bases its definition of hate crimes on the U.S. Hate Crime Statistics Act of 1990. Crimes committed with animosity based on race, religion, sexual orientation, ethnicity, and disabilities are covered under this Act. Crimes committed with animosity based on gender or age are not currently covered under this Act and, as a result, are not included in the SBI’s statistics on hate crimes. In 2003, the SBI reported 77 hate crime incidents. The bias motivation distribution was as follows: 51 for race, 12 for ethnicity, 4 for religion, 10 for sexual orientation, and 0 for disability. Based on this information, it is not known how many of these hate crime incidents resulted in convictions.

Year	Number of Hate Crime Incidents	Number of Agencies Reporting Hate Crime Incidents
1995	52	59
1996	34	83
1997	42	22
1998	40	17
1999	31	15
2000	39	15
2001	85	41
2002	62	29
2003	77	22

SOURCE: *Crime in North Carolina - 2003*

G.S. 14-3(c)

There is no data available to estimate how many misdemeanor convictions may be affected by the proposed broadening of this statute. The Administrative Office of the Courts (AOC) does not have a specific offense code for violations of N.C.G.S. 14-3.

In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, Class 2 or Class 3 convictions for this offense that would be reclassified to Class 1 convictions under this proposed bill would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

There is no data available to estimate how many Class A1 and Class 1 misdemeanors would be moved to Class I. If, for example, there were 10 convictions that moved from Class A1 or Class 1 misdemeanors to Class I felony convictions under this proposed bill, 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.

G.S. 14-3(d)

It is not possible to determine which offenders convicted of Class B1-I felonies (i.e., the number of offenders, the offense class, or prior record level) to which this provision could apply. The number of average additional months served by moving up one prior record level will vary greatly depending on the original felony class and prior record level. Therefore, the impact of this provision cannot be determined, but could be substantial.

G.S. 14-401.14

In FY 2003/04 there were 12 convictions for ethnic intimidation. It is not known how many additional convictions would result by broadening the scope of the existing statute to add “real or perceived race, gender or gender expression, sexual orientation, disability, and age” to the list of factors. In FY 2003/04, 19% of Class 1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class 1 convictions was 31.2 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, broadening the scope of the existing statute would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

G.S. 15A-1340.16(d)(17)

The aggravated sentence range allows the judge to impose a sentence that is up to 25% longer than the longest sentence in the presumptive sentence range. During FY 2003/04, 7% (or 655) of active sentences imposed for felony convictions were in the aggravated sentencing range. However, the Administrative Office of the Courts’ computerized Criminal Information System does not contain data on the application of specific aggravating or mitigating factors. Therefore, it is not known how many sentences have been aggravated based on this aggravating factor. It is also not known how many sentences might be aggravated if this aggravating factor is broadened to include “real or perceived race, gender or gender expression, sexual orientation, disability, and age.” Therefore, the impact of this provision cannot be determined.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 532/HB 935 - CONSTRUCTION SITE THEFT/AGGRAVATE
PENALTY**

STATUTE

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

DESCRIPTION

Subsection (b)(6):

If larceny is from a permitted construction site.

OFFENSE CLASS

CURRENT: If the goods are worth more than \$1,000, it is a Class H felony, \$1,000 or less, it is a Class 1 misdemeanor.

PROPOSED: If the goods are worth more than \$300, it is a Class H felony, \$300 or less, it is a Class 1 misdemeanor.

ANALYSIS

Larceny of goods from a permitted construction site currently comes under the general larceny statute in subsection (a).

FINDINGS



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



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

Note: If the larceny were from a dwelling (other than pursuant to breaking and entering), the goods would have to have a value of more than \$1,000 in order to be a felony.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 532/HB 935 - CONSTRUCTION SITE THEFT/AGGRAVATE PENALTY

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Analysis has not been requested yet.