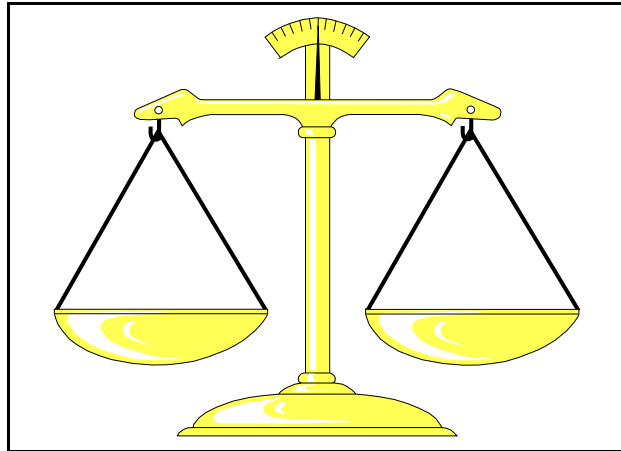


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #3 ON PROPOSED LEGISLATION
PURSUANT TO G.S. 164-43***

***SUBMITTED TO THE 2005 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 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 June 9, 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 June 10, 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 288 - MV MOVE-OVER LAW CHANGES [v.4]

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

Subsection(i):

A person who

1. violates subsections (a) through (f) of this statute (Class 2 misdemeanor, infractions) and
2. causes serious injury or death
3. to a police officer, a firefighter, an emergency vehicle operator, an Incident Management Assistance Patrol member, a public service vehicle operator, or any other emergency response person in the immediate area of the authorized emergency vehicle or public service vehicle.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

FINDINGS



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



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



Offense Classification Criteria are not applicable.

Note: The proposed offense would also be consistent with the offense classification criteria for a Class H felony. Class H felonies are those offense which reasonably tend to result or do result in significant societal injury.

DATE PREPARED: 6/7/05

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 288: MV MOVE-OVER LAW CHANGES [v.4]

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

Analysis has not been requested yet.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: HB 891 - MASTER KEYS/LOCK-PICKING DEVICES
REGULATED [v.2]**

STATUTE

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

DESCRIPTION

Subsection (b):

Any person who

1. possesses
2. any motor vehicle master key, manipulative key, or other motor vehicle lock-picking device, or hot wiring device,
3. with the intent to commit any felony, larceny, or unauthorized use of a motor propelled conveyance.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor. Class I felony for second or subsequent violation.

ANALYSIS

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

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



Offense Classification Criteria are not applicable.

DATE PREPARED: 6/7/05

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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 891 - MASTER KEYS/LOCK-PICKING DEVICES
REGULATED [v.2] (cont.)**

STATUTE

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

DESCRIPTION

Subsection (c):

Any person who

1. willfully 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 wiring device, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle
3. for use in any manner prohibited by this section.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor. Class I felony for second or subsequent violation.

ANALYSIS

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

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



Offense Classification Criteria are not applicable.

DATE PREPARED: 6/7/05

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 891: MASTER KEYS/LOCK-PICKING DEVICES REGULATED [v.2]

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 926 - CONCEALING A DEATH/CRIM. OFFENSE [v.3]

STATUTE

§ 14-401.22. Concealment of death.

DESCRIPTION

Subsection (a):

A person who

1. with the intent to conceal the death of a person,
2. a. fails to notify a law enforcement authority of the death or
b. secretly buries or otherwise secretly disposes of a dead human body.

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.

Subsection (b) of version 3 makes “aiding, counseling, or abetting” a Class A1 misdemeanor. Aiding and abetting a felony offense is usually punishable as provided for that felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/7/05

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 926: CONCEALING A DEATH/CRIM. OFFENSE [v.3]

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Since the proposed bill creates new offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under this bill.

G.S. 14-401.22(a)

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.

In FY 2003/04, there were no convictions under N.C.G.S. 14-46, which makes it a Class I felony to secretly bury or otherwise dispose of the dead body of a newborn child.

G.S. 14-401.22(b)

In FY 2003/04, 24% of Class A1 misdemeanor convictions resulted in active sentences. The average estimated time served for Class A1 convictions was 53.8 days. Offenders serving active sentences of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

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 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT
[v.2]**

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (b):

A person who

1. a. stands in a position of trust and confidence with an elder adult or disabled adult, or
b. has a business relationship with an elder adult or disabled adult
2. knowingly,
3. by deception or intimidation,
4. obtains or uses, or endeavors to obtain or use,
5. an elder adult's or disabled adult's funds, assets, or property
6. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult, and
7. the value of the property is \$100,000 or more.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

The current offense for exploitation of disabled or elder adults would be repealed under this bill. (G.S. 14-32.3(c)) It is a Class H felony if the value of the property is more than \$1,000, a Class 1 misdemeanor if the value of the property is \$1,000 or less. (*See also* House Bill 1216.)

FINDINGS

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

DATE PREPARED: 6/7/05

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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 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT
[v.2] (cont.)**

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (b):

A person who

1. a. stands in a position of trust and confidence with an elder adult or disabled adult, or
b. has a business relationship with an elder adult or disabled adult
2. knowingly,
3. by deception or intimidation,
4. obtains or uses, or endeavors to obtain or use,
5. an elder adult's or disabled adult's funds, assets, or property
6. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult, and
7. the value of the property is \$20,000 or more but less than \$100,000.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

The current offense for exploitation of disabled or elder adults would be repealed under this bill. (G.S. 14-32.3(c)) It is a Class H felony if the value of the property is more than \$1,000, a Class 1 misdemeanor if the value of the property is \$1,000 or less.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A Class G felony tends to result in serious property loss from the person or from the person's dwelling. This offense does not result in serious property loss from the person or the person's dwelling. 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: 6/7/05

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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 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT
[v.2] (cont.)**

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (b):

A person who

1. a. stands in a position of trust and confidence with an elder adult or disabled adult, or
b. has a business relationship with an elder adult or disabled adult
2. knowingly,
3. by deception or intimidation,
4. obtains or uses, or endeavors to obtain or use,
5. an elder adult's or disabled adult's funds, assets, or property
6. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult, and
7. the value of the property is less than \$20,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The current offense for exploitation of disabled or elder adults would be repealed under this bill. (G.S. 14-32.3(c)) It is a Class H felony if the value of the property is more than \$1,000, a Class 1 misdemeanor if the value of the property is \$1,000 or less.

FINDINGS

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

DATE PREPARED: 6/7/05

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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 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT
[v.2] (cont.)**

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (c):

A person who

1. knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent,
2. obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use
3. an elder adult's or disabled adult's funds, assets, or property
4. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult, and
5. the value of the property is \$100,000 or more.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

The current offense for exploitation of disabled or elder adults would be repealed under this bill. (G.S. 14-32.3(c)) It is a Class H felony if the value of the property is more than \$1,000, a Class 1 misdemeanor if the value of the property is \$1,000 or less.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A Class G felony tends to result in serious property loss from the person or from the person's dwelling. This offense does not result in serious property loss from the person or the person's dwelling. This offense would be consistent with a Class F felony or a Class H felony. The Sentencing Commission classified offenses which reasonably tend to or do result in serious societal injury as Class F felonies and offenses which reasonably tend to or do result in significant societal injury as Class H felonies.

DATE PREPARED: 6/7/05

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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 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT
[v.2] (cont.)**

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (c):

A person who

1. knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent,
2. obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use
3. an elder adult's or disabled adult's funds, assets, or property
4. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult, and
5. the value of the property is \$20,000 or more but less than \$100,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

The current offense for exploitation of disabled or elder adults would be repealed under this bill. (G.S. 14-32.3(c)) It is a Class H felony if the value of the property is more than \$1,000, a Class 1 misdemeanor if the value of the property is \$1,000 or less.

FINDINGS

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

DATE PREPARED: 6/7/05

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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 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT
[v.2] (cont.)**

STATUTE

§ 14-112.2. Exploitation of an elder adult or disabled adult.

DESCRIPTION

Subsection (c):

A person who

1. knows or reasonably should know that an elder adult or disabled adult lacks the capacity to consent,
2. obtains or uses, endeavors to obtain or use, or conspires with another to obtain or use
3. an elder adult's or disabled adult's funds, assets, or property
4. with the intent
 - a. to temporarily or permanently deprive the elder adult or disabled adult of the use, benefit, or possession of the funds, assets, or property, or
 - b. to benefit someone other than the elder adult or disabled adult, and
5. the value of the property is less than \$20,000.

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.

The current offense for exploitation of disabled or elder adults would be repealed under this bill. (G.S. 14-32.3(c)) It is a Class H felony if the value of the property is more than \$1,000, a Class 1 misdemeanor if the value of the property is \$1,000 or less.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 6/7/05

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1466 - EXPLOITATION/ELDERLY OR DISABLED ADULT [v.2]

**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 1486 - FELONY DEATH BY VEHICLE [v.2]

STATUTE

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

DESCRIPTION

Subsection (a1) First Degree Felony Death by Vehicle:

A person who

1. unintentionally causes the death of another person
2. while engaged in the offense of impaired driving (G.S. 20-138.1) or impaired driving commercial vehicle (G.S. 20-138.2) and
3. commission of that offense is the proximate cause of the death and
4. any of the following factors is present at the time of the commission of the crime:
 - a. Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more at a relevant time after driving.
 - b. A violation of G.S. 20-28 or G.S. 20-28.1 (driving while license revoked).
 - c. One or more prior convictions for an impaired driving offense during the seven years before the current offense.
 - d. A violation under G.S. 20-141.5(b) of felony speeding to elude arrest.

PROPOSED OFFENSE CLASS

Class E felony.

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 homicide offenses.

DATE PREPARED: 6/7/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1486: FELONY DEATH BY VEHICLE [v.2]

**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 472 - CHILD EXPLOITATION PREVENTION ACT [v.3]

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 H 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 significant societal injury as Class H felonies.

Version 3 adds this offense to the list of “sexually violent offense[s]” under G.S. 14-208.6(5), requiring registration as a sex offender under Article 27A of Chapter 14.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 6/6/2005

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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 472 - CHILD EXPLOITATION PREVENTION ACT [v.3] (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. a person the perpetrator believes to be a child who is less than 16 years of age and who the defendant believes to be 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 H felony.

ANALYSIS

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

Version 3 adds this offense to the list of “sexually violent offense[s]” under G.S. 14-208.6(5), requiring registration as a sex offender under Article 27A of Chapter 14.

FINDINGS

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

DATE PREPARED: 6/6/2005

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

**SB 472: CHILD EXPLOITATION PREVENTION ACT
PCS S472-CSLH-18 [v.3]**

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The proposed bill reclassifies G.S. 14-202.3, Solicitation of child by computer to commit an unlawful sex act, from a Class I felony to a Class H felony. 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 ten Class I convictions under the current statute that were reclassified to Class H (as proposed), this would result in the need for two additional prison beds the first year and three additional prison beds the second year.

The proposed bill amends G.S. 14-202.3 to create a new Class H felony offense if a person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, etc., by means of a computer, someone whom the person believes to be under the age of 16, and at least three years younger than the person, to meet with them or any other person for the purpose of committing an unlawful sex act. 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 three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

The proposed bill amends G.S. 14-208.6(5) to include G.S. 14-202.3 in the list of offenses defined as “sexually violent offenses.” People who violate G.S. 14-202.3 would then be required to register under the Sex Offender and Public Protection Registration Program. Registration violations would be a Class F felony under G.S. 14-208.11. It is not known how many additional registration violations might occur as a result of the proposed bill. 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: SB 532 - CONSTRUCTION SITE THEFT/AGGRAVATE
PENALTY [v.2]**

STATUTE

§14-72.6. Felonious larceny, possession, or receiving of stolen goods from a permitted construction site.

DESCRIPTION

Any person who

1. commits larceny of goods, or possesses or receives goods with actual knowledge or reasonable grounds to believe they were stolen,
2. from a permitted construction site
3. where the goods are valued in excess of \$300.00 but less than \$1,000.00.

PROPOSED OFFENSE CLASS

Class I felony.

An offender convicted of this offense who is not eligible for active or intermediate punishment may be sentenced to an active term of 30 days, in addition to authorized community punishment.

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.



Offense Classification Criteria are not applicable.

Note: The imposition of an active punishment of up to 30 days in addition to the suspended active sentence and any authorized community punishment is inconsistent with structured sentencing.

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.

DATE PREPARED: 6/6/2005

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 532: CONSTRUCTION SITE THEFT/AGGRAVATE PENALTY [v.2]

**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 574 - AMEND POST-RELEASE SUPERVISION LAWS [v.2]

STATUTE

Chapter 15A: Article 81B. Structured Sentencing of Persons Convicted of Crimes, Article 82. Probation, Article 83. Imprisonment, Article 84A. Post-Release Supervision.

DESCRIPTION

The proposed bill makes post-release supervision (PRS) a separate sanction from an offender's primary sentence, and amends the application and incidents of PRS as summarized for version 1 of SB 574 in *Report #2 on Proposed Legislation Pursuant to G.S. 164-43*, May 2005.

Subsection (d1) of G.S. 15A-1368.3 specifies that a sex offender who violates the conditions of PRS and whose PRS is revoked will be re-released onto PRS for the balance of the five year supervision period at the completion of his active sentence. Subsequent violations of the conditions of PRS may be punished by criminal contempt, as determined by the court. The remaining period of supervision would be tolled during any periods of imprisonment for contempt.

PUNISHMENT RANGE

CURRENT: Offenders reimprisoned for violations of the conditions of PRS may be re-released prior to the expiration of their maximum sentences, pursuant to policies of the Post-Release Supervision and Parole Commission (PRSPC). The current practice of the PRSPC is not to re-release after revocation. The sentences for all offenders who serve the remainder of their maximum sentences after revocation are terminated, without further supervision.

PROPOSED: Offenders reimprisoned for violations of the conditions of PRS would not be re-released prior to the expiration of their terms of imprisonment. Non-sex offenders would not return to supervision after release from their revocation imprisonment. Sex offenders would be re-released onto PRS for the balance of their five-year supervision periods, with violations punishable as criminal contempt.

ANALYSIS

Version 1 of SB 574 resulted from a recommendation of the Sentencing Commission, introduced as SB 528 in 2003.

Version 2 adds subsection (d1) to G.S. 15A-1368.3.

FINDINGS



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



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



G.S. 164-41 is not applicable.

DATE PREPARED: 6/6/2005

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 574: AMEND POST-RELEASE SUPERVISION LAWS [v.2]

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

Analysis has not been requested yet.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 934 - NOTARY PUBLIC ACT [v.2]

STATUTE

§10B-37. Enforcement and penalties.

DESCRIPTION

Subdivision (d)(1):

A notary who

1. takes an acknowledgment, verification, proof, or jurat, or performs an oath or affirmation
2. knowing it to be false or fraudulent.

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.

Performance of a notarial act knowing it to be false or fraudulent currently is a Class I felony under G.S. 10A-12(c) (repealed by the proposed bill).

FINDINGS

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

DATE PREPARED: 6/6/2005

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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 934 - NOTARY PUBLIC ACT [v.2] (cont.)

STATUTE

§10B-37. Enforcement and penalties.

DESCRIPTION

Subdivision (d)(2):

A notary who

1. takes an acknowledgment, verification, proof, or jurat
2. without the principal appearing [before the notary]
3. with the intent to commit fraud.

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.

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/6/2005

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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 934 - NOTARY PUBLIC ACT [v.2] (cont.)

STATUTE

§10B-37. Enforcement and penalties.

DESCRIPTION

Subsection (e):

Any person who

1. performs notarial acts in this State
2. with the knowledge that the person is not commissioned under Chapter 10B.

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

A person who holds himself out to the public as a notary or performs a notarial act without a commission currently is guilty of a Class 1 misdemeanor under G.S. 10A-12(a) (repealed by the proposed bill).

FINDINGS

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

DATE PREPARED: 6/6/2005

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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 934 - NOTARY PUBLIC ACT [v.2] (cont.)

STATUTE

§10B-37. Enforcement and penalties.

DESCRIPTION

Subsection (f):

A person who

1. without authority obtains, uses, conceals, defaces, or destroys
2. the seal or notarial records of a notary.

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.
- Offense Classification Criteria are not applicable.

DATE PREPARED: 6/6/2005

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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 934 - NOTARY PUBLIC ACT [v.2] (cont.)

STATUTE

§10B-37. Enforcement and penalties.

DESCRIPTION

Subsection (j):

A person who

1. knowingly solicits, coerces, or in any material way influences
2. a notary
3. to commit official misconduct [under subsections (d) or (f), described above].

PROPOSED OFFENSE CLASS

Class I felony.

ANALYSIS

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

G.S. 10B-37(j) specifies that any person soliciting, coercing or in any material way influencing a notary to commit official misconduct is subject to the same level of punishment as the notary. Subsections (d) and (f) prohibit conduct that would be Class I felonies for a notary.

Knowingly soliciting or coercing a notary to commit official misconduct currently is a Class 1 misdemeanor (regardless of the punishment to which the notary would be subject) under G.S. 10A-12(d) (repealed by the proposed bill).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 6/6/2005

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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 934 - NOTARY PUBLIC ACT [v.2] (cont.)

STATUTE

§10B-59. Wrongful manufacture, distribution, or possession of software of hardware.

DESCRIPTION

Subsection (a):

Any person who

1. Knowingly creates, manufactures, or distributes software
2. for the purpose of allowing a person to act as an electronic notary
3. without being commissioned and registered as one.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

A Class G felony tends to result in serious property loss from the person or from the person's dwelling. This offense does not result in serious property loss from the person or the person's dwelling. This offense would be consistent with a Class F felony or a Class H felony. The Sentencing Commission classified offenses which reasonably tend to or do result in serious societal injury as Class F felonies and offenses which reasonably tend to or do result in significant societal injury as Class H felonies.

DATE PREPARED: 6/6/2005

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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 934 - NOTARY PUBLIC ACT [v.2] (cont.)

STATUTE

§10B-59. Wrongful manufacture, distribution, or possession of software or hardware.

DESCRIPTION

Subsection (b):

Any person who:

1. wrongfully obtains, conceals, damages, or destroys
2. a certificate, disk, coding, card, program, software, file, or hardware
3. that enables an electronic notary to affix an electronic signature.

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.
- Offense Classification Criteria are not applicable.

DATE PREPARED: 6/6/2005

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 934: NOTARY PUBLIC ACT [v.2]

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

Analysis has not been requested yet.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.2]**

STATUTE

§14-27.3. Second-degree rape.

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class B2 felony.

ANALYSIS

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

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

FINDINGS

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

DATE PREPARED: 5/5/05

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.2] (cont.)**

STATUTE

§14-27.5. Second-degree sexual offense.

DESCRIPTION

A person who

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

OFFENSE CLASS

CURRENT: Class C felony.

PROPOSED: Class B2 felony.

ANALYSIS

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

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

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 5/5/05

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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: SB 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.2] (cont.)**

STATUTE

§14-27.2. First-degree rape.

DESCRIPTION

Any person who

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

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

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

First-degree rape currently is a Class B1 felony. Version 2 of SB 1039 creates a new means of committing the offense by adding the element of intercourse with the mentally disabled, mentally incapacitated, or physically helpless.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE PREPARED: 6/7/2005

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 1039 - INCREASE RAPE PENALTIES/
HELPLESS VICTIMS [v.2] (cont.)**

STATUTE

§14-27.4. First-degree sexual offense.

DESCRIPTION

Any person who

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

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

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

First-degree sexual offense currently is a Class B1 felony. Version 2 of SB 1039 creates a new means of committing the offense by adding the element of a sex act with the mentally disabled, mentally incapacitated, or physically helpless.

FINDINGS

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

DATE PREPARED: 6/7/2005

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1039: INCREASE RAPE PENALTIES/HELPLESS VICTIMS [v.2]

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

Analysis has not been requested yet.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

**BILL NUMBER/SHORT TITLE: SB 1080 - SEX OFFENDER REGISTRY/
CRIMINAL LAW CHANGES [v.2]**

STATUTE

§90-95. Violations; penalties.

DESCRIPTION

Subsection (b1):

Any person who

1. sells, delivers, or possesses
2. two pounds [or more] but less than 10 pounds
3. of a Schedule VI controlled substance [marijuana or tetrahydrocannabinols].

PROPOSED OFFENSE CLASS

Class H felony.

The sentence is prescribed as a minimum of 20 months and a maximum of 24 months, with a fine from a minimum of \$1,000.00 to a maximum of \$5,000.00.

ANALYSIS

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

Current offenses involving two or more pounds and up to 10 pounds of Schedule VI substances are: sale (Class H felony); manufacture, delivery, or possession with intent to sell, manufacture or deliver (Class I felony); and possession of more than 1.5 ounces of marijuana, 0.15 ounce of hashish, or any quantity of tetrahydrocannabinol (synthetic or isolated from hashish) (Class I felony). Sentences imposed for these offenses are determined according to the felony punishment chart.

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: 6/6/2005

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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 1080 - SEX OFFENDER REGISTRY/
CRIMINAL LAW CHANGES [v.2] (cont.)**

STATUTE

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

DESCRIPTION

Any person who:

1. is required to register as a sex offender
2. registers because of an offense involving sexual abuse of a minor, and
3. communicates with, is in the presence of, or is found in or on the premises of the victim of the offense.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

Communicating with, being in the presence of, or being found in or on the premises of the victim is also a violation of a controlling condition of post-release supervision (PRS) for sex offenders, for which PRS may be revoked and the remainder of the offender's maximum sentence activated. G.S. 15A-1368.4(b1)(3).

FINDINGS

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

DATE PREPARED: 6/6/2005

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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 1080 - SEX OFFENDER REGISTRY/
CRIMINAL LAW CHANGES [v.2] (cont.)**

STATUTE

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

DESCRIPTION

Any person who:

1. is required to register as a sex offender
2. registers because of an offense involving sexual abuse of a minor, and
3. holds employment, or works as a volunteer, in any position that involves daily or regular supervision, contact, or association with minors.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

FINDINGS

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

DATE PREPARED: 6/6/2005

IMPACT OF BILL ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 1080: SEX OFFENDER REGISTRY/CRIMINAL LAW CHANGES [v.2]

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

Note: The following analysis was prepared for version 1 of SB 1080, which included an additional offense for registered sex offenders. The language creating that offense was stricken in version 2, but does not affect the threshold projection of prison impact in Part II.

PART I.

This part separates out some of the controlled substance offenses, reclassifies some of them, and imposes a mandatory active sentence. It creates a new subsection (G.S. 90-95(b1)) that makes it a Class H felony for a person to sell, deliver, or possess two pounds or more but less than ten pounds of any Schedule VI controlled substance. Violators shall be sentenced to a minimum term of 12 months and a maximum term of 24 months in the State’s prison. (NOTE: The DOC looks at the maximum sentence and subtracts earned time. Based on earned time rules (up to 6 days per month), no offender could serve less than 20 months under this bill.)

The following table lists the offenses to which this proposed bill applies:

Applicable Schedule VI Controlled Substance Offenses (10 pounds or less)	Current Offense Class
Sale	H
Delivery	I
Possession with intent to manufacture, sell or deliver	I
Possession	I
Misdemeanor Possession (>½ oz to 1½ oz of marijuana)	1

NOTE: Possession of a Schedule VI controlled substance is a Class 3 misdemeanor. There were 1,036 convictions for this offense in FY 2003/04. This offense includes possession of tetrahydrocannabinols and possession of less than ½ ounce of marijuana. Because it is not possible to determine how many of these convictions were for possession of less than ½ ounce of marijuana, these convictions were excluded from analysis.

Under this bill some portion of the Class H felony convictions would remain as Class H but would be subject to the mandatory sentence. Some portion of the Class I felony and Class 1 misdemeanor convictions would be reclassified to a Class H felony and subject to the mandatory sentence.

In FY 2003/04 there were 737 felony convictions and 1,082 misdemeanor convictions for the applicable offenses. Of the 737 felony convictions, 81 (or 11%) received an active sentence with an average estimated time served of 7.7 months. Of the 1,082 misdemeanor convictions, 135 (or 12%) received an active sentence with an average estimated time served of 21 days. It is not known how many of these felony and misdemeanor convictions would be reclassified and subject to the mandatory sentence under the proposed

bill since the Administrative Office of the Courts' automated Criminal Information System does not contain information on controlled substance amounts. For this reason and because the proposed bill creates a new punishment, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. However, this bill would be expected to have some impact on the prison population due to the mandatory active sentence and longer sentence length than under current law. Any applicable Class H felony, Class I felony, and Class 1 misdemeanor convictions that did not receive an active sentence under current law would receive a mandatory active sentence of at least 20 months under the proposed bill (see above note). For each of these convictions, an additional prison bed would be needed the first year and for most of the second year. Any applicable Class H felony, Class I felony, and Class 1 misdemeanor convictions that received an active sentence under current law would receive a longer sentence under the proposed bill (at least 20 months under the proposed bill compared to 7.7 months for the applicable felony convictions and 21 days for the applicable misdemeanor convictions), which would result in the need for additional prison beds in the first year and in the second year.

PART II.

Section 6 amends G.S. 14-208.11 to add additional restrictions on sex offenders who are required to register because of an offense involving sexual abuse of a minor.

In FY 2003/04, there were 1,025 convictions for offenses covered under this statute. (Note: The current list does not include 14-27.7A.) It is not known how many of these convictions involved sexual abuse of a minor. Anyone who is subject to these additional conditions faces an increased risk of violation. Violating any of the registration requirements is a Class F felony under this same statute. It is not known how many additional registration violations might occur as a result of the proposed bill. 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.