

# REVIEW OF PROPOSED LEGISLATION PURSUANT TO N.C.G.S. 164-43

## REPORT #1

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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 2, 2022. 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, 2022.

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

The bills included in this report were reviewed by the Sentencing Commission on June 3, 2022.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or opposition to the bill. In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

## THE OFFENSE CLASSIFICATION CRITERIA

The Sentencing Commission was required by G.S. 164-41 to ".... classify criminal offenses into felony and misdemeanor categories on the basis of their severity." The Commission developed classification criteria to guide the classification process and to ensure that there was a systematic and rational basis for the classifications. The Commission decided that the severity of an offense should be directly related to the harm to the victim that normally results or tends to result from the criminal conduct.

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria were established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria. The Commission did not apply the classification criteria to homicide and controlled substances offenses.

The purpose of establishing the classification criteria was to create a rational and consistent philosophical basis for classifying offenses; to assure proportionality in severity; and to provide a guidepost for classifying new crimes in the future.

Under the classification criteria, the most serious offense classes (A through F) primarily involve personal injury, the risk of personal injury, serious societal injury, or widespread societal injury. The lower offense levels (G through I) primarily involve property loss or less serious societal injury. The degree of harm is divided into three levels; injury to person, property, or society; significant injury to person, property, or society; and serious injury to person, property, or society.

The Commission also assigned misdemeanor offenses to four classes: class A1, class 1, class 2, or class 3. The Commission did not create classification criteria for misdemeanors but relied on the maximum sentences previously set by the General Assembly. Generally, crimes which had previously been punishable by over six months were made class 1 misdemeanors, those previously punishable by more than 30 days and up to six months were made class 2 misdemeanors, and those previously punishable by 30 days or less were made class 3 misdemeanors. Assaultive misdemeanors were made Class A1 misdemeanors.

In 2012 the Commission adopted a separate set of classification criteria to be used for reviewing the proposed classification of homicide offenses. These criteria resemble the Commission's harm-based offense classification criteria but rely upon factors other than harm to evaluate the severity of a homicide offense.

## FELONY OFFENSE CLASSIFICATION CRITERIA\*

CLASS	CRITERIA
A	<ul style="list-style-type: none"><li>• Reserved for First Degree Murder</li></ul> <p><i>[Reasonably tends to result or does result in:]</i></p>
B	<ul style="list-style-type: none"><li>• Serious debilitating long-term personal injury</li></ul>
C	<ul style="list-style-type: none"><li>• Serious long-term personal injury</li><li>• Serious long-term or widespread societal injury</li></ul>
D	<ul style="list-style-type: none"><li>• Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling</li></ul>
E	<ul style="list-style-type: none"><li>• Serious personal injury</li></ul>
F	<ul style="list-style-type: none"><li>• Significant personal injury</li><li>• Serious societal injury</li></ul>
G	<ul style="list-style-type: none"><li>• Serious property loss Loss from the person or the person's dwelling</li></ul>
H	<ul style="list-style-type: none"><li>• 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</li><li>• Personal injury</li><li>• Significant societal injury</li></ul>
I	<ul style="list-style-type: none"><li>• Serious property loss: All other felonious property loss</li><li>• Societal injury</li></ul>
M	<ul style="list-style-type: none"><li>• All other misdemeanors</li></ul>

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\* Personal injury includes both physical and mental injury.

Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

## HOMICIDE OFFENSE CLASSIFICATION CRITERIA

<b>CLASS</b>	<b>CRITERIA</b>
	<b>(FELONY)</b>
<b>A</b>	<ul style="list-style-type: none"><li>• Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.</li></ul>
<b>B</b>	<ul style="list-style-type: none"><li>• Intentional killing with malice.</li></ul>
<b>D</b>	<ul style="list-style-type: none"><li>• Intentional killing with a partial legal excuse.</li></ul>
<b>E</b>	<ul style="list-style-type: none"><li>• Unintentional killing by criminal or culpable negligence with aggravating circumstances.</li></ul>
<b>F</b>	<ul style="list-style-type: none"><li>• Unintentional killing by criminal or culpable negligence.</li></ul>
<b>H</b>	<ul style="list-style-type: none"><li>• Unintentional killing by motor vehicle involving a serious traffic violation.</li></ul>
	<b>(MISDEMEANOR)</b>
<b>A1</b>	<ul style="list-style-type: none"><li>• Unintentional killing by motor vehicle involving a traffic violation.</li></ul>

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**  
**REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS**  
**June 3, 2022**

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 1005/ SB 766	Organized Retail Theft [Ed. 3/Ed. 2]	G.S. 14-86.6(a)(1)	Class F	Consistent	Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit.	<a href="#">1</a>
		G.S. 14-86.6(a)(1)	Class C	Consistent	Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit.	<a href="#">2</a>
		G.S. 14-86.6(a)(2)	Class G	Consistent		<a href="#">3</a>
		G.S. 14-86.6(a)(2)	Class F	Consistent		<a href="#">4</a>
		G.S. 14-86.6(a)(2)	Class C	Consistent		<a href="#">5</a>
		G.S. 14-86.6(a)(3)	Class H	Consistent	Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit.	<a href="#">6</a>
		G.S. 14-86.6(a)(3)	Class F	Consistent	Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit.	<a href="#">7</a>
		G.S. 14-86.6(a)(3)	Class C	Consistent	Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit.	<a href="#">8</a>
SB 201	Various Motor Vehicle/ Dealer Changes [Ed. 4]	G.S. 14-164.1	Class I	Consistent		<a href="#">9</a>
SB 765	Marijuana Legalization & Regulation [Ed. 1]	G.S. 18D-700(c)	Class F	Inconsistent		<a href="#">10</a>



Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 18D-701(d)(3)	Class I	Inconsistent		<a href="#">11</a>
		G.S. 18D-701(d)(4)	Class F	Inconsistent		<a href="#">12</a>
		G.S. 18D-702(a)	Class I	Consistent		<a href="#">13</a>
		G.S. 18D-702(c)	Class I	Consistent	Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit.	<a href="#">14</a>
		G.S. 18D-714	Class H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">15</a>
SB 828	Child Abuse – Positive Drug Test [Ed. 1]	G.S. 14-318.4(a7)(1)	Class C	Inconsistent		<a href="#">16</a>
		G.S. 14-318.4(a7)(2)	Class E	Inconsistent	Would be consistent with a Class G felony.	<a href="#">17</a>
		G.S. 14-318.4(a7)(3)	Class G	Inconsistent	Would be consistent with a Class H felony.	<a href="#">18</a>

**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 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision(a)(1):

A person who

1. Conspires with another person
2. to commit theft of retail property from retail establishments
3. with the intent to sell that retail property for monetary or other gain, and
4. who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration
5. when the retail property has a value exceeding \$50,000 aggregated over a 90-day period.

**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.

It is currently a Class H felony to commit this offense where the value of the property exceeds \$1,500, and a Class G felony to commit this offense where the value of the property exceeds \$20,000. (G.S. 14-86.6(a) and 14-86.6(a1)(1)) This bill moves the punishment provisions but does not make any substantive changes to the offenses.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit, pursuant to G.S. 14-2.4.

**DATE OF REVIEW:** 06/03/2022

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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 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(1):

A person who

1. conspires with another person
2. to commit theft of retail property from one or more retail establishments,
3. with the intent to sell that retail property for monetary or other gain, and
4. who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration
5. when the retail property has a value exceeding \$100,000 aggregated over a 90-day period.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

It is currently a Class H felony to commit this offense where the value of the property exceeds \$1,500, and a Class G felony to commit this offense where the value of the property exceeds \$20,000. (G.S. 14-86.6(a) and 14-86.6(a1)(1)) This bill moves the punishment provisions but does not make any substantive changes to the offenses.

Embezzlement of property received by virtue of office or employment (amount involved \$100,000 or more) is a Class C felony. (G.S. 14-90)

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit, pursuant to G.S. 14-2.4.

**DATE OF REVIEW:** 06/03/2022

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(2):

A person who

1. receives or possesses any retail property
2. that has been taken or stolen in violation of subdivision (1) of this subsection
3. while knowing or having reasonable grounds to believe the property is stolen
4. when the retail property has a value exceeding \$20,000 aggregated over a 90-day period.

**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.

It is currently a Class H felony to commit this offense where the value of the property exceeds \$1,500.

Under G.S. 14-72, it is a Class H felony to receive stolen goods or possess stolen goods worth more than \$1,000.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

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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 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(2):

A person who

1. receives or possesses any retail property
2. that has been taken or stolen in violation of subdivision (1) of this subsection
3. while knowing or having reasonable grounds to believe the property is stolen
4. when the retail property has a value exceeding \$50,000 aggregated over a 90-day period.

**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.

It is currently a Class H felony to commit this offense where the value of the property exceeds \$1,500.

Under G.S. 14-72, it is a Class H felony to receive stolen goods or possess stolen goods worth more than \$1,000.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

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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 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(2):

A person who

1. receives or possesses any retail property
2. that has been taken or stolen in violation of subdivision (1) of this subsection
3. while knowing or having reasonable grounds to believe the property is stolen
4. when the retail property has a value exceeding \$100,000 aggregated over a 90-day period.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

It is currently a Class H felony to commit this offense where the value of the property exceeds \$1,500.

Under G.S. 14-72, it is a Class H felony to receive stolen goods or possess stolen goods worth more than \$1,000.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(3):

A person who

1. Conspires with two or more other persons
2. as an organizer, supervisor, financier, leader, or manager
3. to engage for profit
4. in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant in violation of this section
5. when the retail property has a value exceeding \$1,500 aggregated over a 90-day period.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

It is currently a Class G felony to commit this offense where the value of the property exceeds \$20,000. (G.S. 14-86.6(a1)(1))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit, pursuant to G.S. 14-2.4.

**DATE OF REVIEW:** 06/03/2022

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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 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(3):

A person who

1. Conspires with two or more other persons
2. as an organizer, supervisor, financier, leader, or manager
3. to engage for profit
4. in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant in violation of this section
5. when the retail property has a value exceeding \$50,000 aggregated over a 90-day period.

**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.

It is currently a Class G felony to commit this offense where the value of the property exceeds \$20,000. (G.S. 14-86.6(a1)(1))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit, pursuant to G.S. 14-2.4.

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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 1005 [Ed. 3]/SB 766 [Ed. 2] – Organized Retail Theft (cont'd)

**STATUTE**

§ 14-86.6. Organized retail theft.

**DESCRIPTION**

Subdivision (a)(3):

A person who

1. Conspires with two or more other persons
2. as an organizer, supervisor, financier, leader, or manager
3. to engage for profit
4. in a scheme or course of conduct to effectuate the transfer or sale of property stolen from a merchant in violation of this section
5. when the retail property has a value exceeding \$100,000 aggregated over a 90-day period.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

It is currently a Class G felony to commit this offense where the value of the property exceeds \$20,000. (G.S. 14-86.6(a1)(1))

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit, pursuant to G.S. 14-2.4.

**DATE OF REVIEW:** 06/03/2022

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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 201 – Various Motor Vehicle/Dealer Changes [Ed. 4]

**STATUTE**

§ 14-164.1. Possession of catalytic converter removed from a motor vehicle.

**DESCRIPTION**

A person who

1. possesses
2. a catalytic converter
3. that has been removed from a motor vehicle and
4. the individual knew or should have known that the catalytic converter was unlawfully obtained.

**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.

Felony larceny of a catalytic converter is a Class I felony. G.S. 14-72.8(a)

Felony receiving or possessing stolen goods (value of goods is \$1,000 or more or qualifies under G.S. 14-72(b)) is a Class H felony. G.S. 14-72

Misdemeanor receiving or possessing stolen goods (value of goods in less than \$1,000) is a Class 1 misdemeanor. G.S. 14-72

Receiving or possessing stolen goods represented as stolen is a Class H felony. G.S. 14-71

Receiving or transferring stolen vehicles is a Class H felony. G.S. 14-71.2

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

**IMPACT ANALYSIS NOT REQUESTED YET**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 765 – Marijuana Legalization & Regulation [Ed. 1]

**STATUTE**

§ 18D-700. Possession, etc., of marijuana and marijuana products by persons 21 years of age or older lawful; penalties.

**DESCRIPTION**

Subsection (c):

A person who

1. possesses on his or her person or in any public place
2. more than one pound of marijuana or an equivalent amount of marijuana product as determined by rule promulgated by the Board of Directors of the North Carolina Cannabis Control Commission, and
3. is not a licensee in the course of his or her duties related to such licensee's marijuana establishment.

**PROPOSED OFFENSE CLASS**

Class F felony.

**ANALYSIS**

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

Marijuana is a Schedule VI controlled substance. (G.S. 90-94) Possession of any amount of marijuana is unlawful. (G.S. 90-95(a)(3)) This bill would repeal G.S. 90-94, thereby removing marijuana from the schedule of controlled substances within the NC Controlled Substances Act.

Possession in excess of 1 ½ ounces of marijuana is a Class I felony. (G.S. 90-95(d)(4))

Trafficking marijuana by possession is a Class H, G, F, or D felony, depending on the quantity (any amount in excess of 10 pounds constitutes trafficking). Trafficking carries a mandatory active sentence and is not sentenced under Structured Sentencing. (G.S. 90-95(h)(1))

This bill would make possession of not more than two ounces of marijuana or an equivalent amount of marijuana product by persons aged 21 and older lawful. This bill would make possession of between two ounces and one pound of marijuana or an equivalent amount of marijuana products punishable by a civil penalty of no more than \$25.

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

**BILL CONTINUED ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 765 – Marijuana Legalization & Regulation [Ed. 1] (cont'd)

**STATUTE**

§ 18D-701. Home cultivation of marijuana for personal use; penalties.

**DESCRIPTION**

Subdivision (d)(3):

A person who

1. cultivates marijuana plants for personal use at their place of residence and
2. possesses
3. more than 49 but no more than 100 marijuana plants.

**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.

Marijuana is a Schedule VI controlled substance. (G.S. 90-94) Possession or manufacture of any amount of marijuana is unlawful. (G.S. 90-95(a)) This bill would repeal G.S. 90-94, thereby removing marijuana from the schedule of controlled substances within the NC Controlled Substances Act.

Possession in excess of 1 ½ ounces of marijuana is a Class I felony. (G.S. 90-95(d)(4))

Manufacture of marijuana is a Class I felony. (G.S. 90-95(b)(2))

Trafficking marijuana by manufacture or possession is a Class H, G, F, or D felony, depending on the quantity (any amount in excess of 10 pounds constitutes trafficking). Trafficking carries a mandatory active sentence and is not sentenced under Structured Sentencing. (G.S. 90-95(h)(1))

This bill would make cultivation of up to two mature marijuana plants and two immature marijuana plants for personal use at their main place of residence by persons aged 21 and older lawful. This bill would make possession of more than two mature marijuana plants and two immature marijuana plants but no more than 10 total marijuana plants punishable by a civil penalty of \$250 for a first offense, a Class 2 misdemeanor for a second offense, and a Class 1 misdemeanor for a third or subsequent offense. This bill would make possession of more than 10 but no more than 49 marijuana plants a Class A1 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

**BILL CONTINUED ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 765 – Marijuana Legalization & Regulation [Ed. 1] (cont'd)

**STATUTE**

§ 18D-701. Home cultivation of marijuana for personal use; penalties.

**DESCRIPTION**

Subdivision (d)(4):

A person who

1. cultivates marijuana plants for personal use their place of residence and
2. possesses
3. more than 100 marijuana plants.

**PROPOSED OFFENSE CLASS**

Class F felony.

**ANALYSIS**

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

Marijuana is a Schedule VI controlled substance. (G.S. 90-94) Possession or manufacture of any amount of marijuana is unlawful. (G.S. 90-95(a)) This bill would repeal G.S. 90-94, thereby removing marijuana from the schedule of controlled substances within the NC Controlled Substances Act.

Possession in excess of 1 ½ ounces of marijuana is a Class I felony. (G.S. 90-95(d)(4))

Manufacture of marijuana is a Class I felony. (G.S. 90-95(b)(2))

Trafficking marijuana by manufacture or possession is a Class H, G, F, or D felony, depending on the quantity (any amount in excess of 10 pounds constitutes trafficking). Trafficking carries a mandatory active sentence and is not sentenced under Structured Sentencing. (G.S. 90-95(h)(1))

This bill would make cultivation of up to two mature marijuana plants and two immature marijuana plants for personal use at their main place of residence by persons aged 21 and older lawful. This bill would make possession of more than two but mature marijuana plants and two immature marijuana plants but no more than 10 total marijuana plants punishable by a civil penalty of \$250 for a first offense, a Class 2 misdemeanor for a second offense, and a Class 1 misdemeanor for a third or subsequent offense. This bill would make possession of more than 10 but no more than 49 marijuana plants a Class A1 misdemeanor.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

**BILL CONTINUED ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 765 – Marijuana Legalization & Regulation [Ed. 1] (cont'd)

**STATUTE**

§ 18D-702. Illegal cultivation or manufacture of marijuana or marijuana products; conspiracy; penalties.

**DESCRIPTION**

Subsection (a):

Except as otherwise provided in Chapter 18D, a person who

1. cultivates or manufactures
2. marijuana or marijuana products
3. in the State
4. without being licensed under Chapter 18D to cultivate or manufacture such marijuana or marijuana products.

**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.

Marijuana is a Schedule VI controlled substance. (G.S. 90-94) Possession or manufacture of any amount of marijuana is unlawful. (G.S. 90-95(a)(3)) This bill would repeal G.S. 90-94, thereby removing marijuana from the schedule of controlled substances within the NC Controlled Substances Act.

Manufacture of marijuana is a Class I felony. (G.S. 90-95(b)(2))

Trafficking marijuana by manufacture is a Class H, G, F, or D felony, depending on the quantity (any amount in excess of 10 pounds constitutes trafficking). Trafficking carries a mandatory active sentence and is not sentenced under Structured Sentencing. (G.S. 90-95(h)(1))

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

**BILL CONTINUED ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 765 – Marijuana Legalization & Regulation [Ed. 1] (cont'd)

**STATUTE**

§ 18D-702. Illegal cultivation or manufacture of marijuana or marijuana products; conspiracy; penalties.

**DESCRIPTION**

Subsection (c):

A person who

1. conspires together with one or more other persons
2. to cultivate or manufacture marijuana or marijuana products in the State without being licensed under Chapter 18D to cultivate or manufacture such marijuana or marijuana products and
3. one or more of such persons does any act to effect the object of the conspiracy.

**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.

Marijuana is a Schedule VI controlled substance. (G.S. 90-94) Possession or manufacture of any amount of marijuana is unlawful. (G.S. 90-95(a)(3)) This bill would repeal G.S. 90-94, thereby removing marijuana from the schedule of controlled substances within the NC Controlled Substances Act.

Manufacture of marijuana is a Class I felony. (G.S. 90-95(b)(2))

Trafficking marijuana by manufacture is a Class H, G, F, or D felony, depending on the quantity (any amount in excess of 10 pounds constitutes trafficking). Trafficking carries a mandatory active sentence and is not sentenced under Structured Sentencing. (G.S. 90-95(h)(1))

Conspiracy to commit any offense defined in the NC Controlled Substances Act is the same class as the offense which was the object of the conspiracy and is punishable as specified for that class of offense. (G.S. 90-98) This bill would make illegal cultivation or manufacture of marijuana or marijuana products a Class I felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

Note: Under Structured Sentencing, conspiracy offenses are generally classified as one class lower than the offense the person conspired to commit, pursuant to G.S. 14-2.4. Conspiracy to commit a Class I felony is generally punishable as a Class 1 misdemeanor.

**DATE OF REVIEW:** 06/03/2022

**BILL CONTINUED ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 765 – Marijuana Legalization & Regulation [Ed. 1] (cont'd)

**STATUTE**

§ 18D-714. Maintaining a fortified drug house; penalty.

**DESCRIPTION**

A person who

1. maintains or operates
2. any office, store, shop, restaurant, dance hall, theater, poolroom, clubhouse, storehouse, warehouse, dwelling house, apartment, or building or structure of any kind that is
  - a. substantially altered from its original status by means of reinforcement with the intent to impede, deter, or delay lawful entry by a law enforcement officer into such structure,
  - b. being used for the purpose of illegally manufacturing or distributing marijuana, and
  - c. the object of a valid search warrant.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

Knowingly keeping or maintaining any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of the NC Controlled Substances Act for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of the NC Controlled Substances Act is a Class 1 misdemeanor. (G.S. 90-108(a)(7)) If the person fortifies the structure with the intent to impede law enforcement entry (by barricading windows and doors), it is a Class I felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 06/03/2022

**IMPACT ANALYSIS NOT YET REQUESTED**



**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 828 – Child Abuse – Positive Drug Test [Ed. 1]

**STATUTE**

§ 14-318.4. Child abuse a felony.

**DESCRIPTION**

Subdivision (a7)(1):

A person who

1. is a parent or any other person providing care to or supervision of a child less than 10 years of age
2. whose child tests positive for a controlled substance during the course of that care or supervision, and
3. the presence of the controlled substance is not due to medical treatment prescribed or administered by a licensed health care professional and
4. the presence of the controlled substance in the child's body results in
  - a. serious bodily injury to the child or
  - b. permanent or protracted loss or impairment of any mental or emotional function of the child.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

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

For the purposes of this provision, controlled substance is defined as a controlled substance classified in Schedule I or II under Article 5 of Chapter 90 of the General Statutes.

Serious bodily injury is defined as bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

Child abuse which intentionally inflicts serious physical injury upon or to the child or which results from intentional assault upon the child resulting in serious physical injury to the child is a Class D felony. (G.S. 14-318.4(a))

Child abuse which intentionally inflicts serious bodily injury to the child or which results from intentional assault upon the child resulting in serious bodily injury or which results in permanent or protracted loss or impairment of any mental or emotional function of the child is a Class B2 felony. (G.S. 14-318.4(a3))

Child abuse resulting from willful or grossly negligent care of the child showing a reckless disregard for human life and where the act or omission results in serious physical injury to the child is a Class G felony. (G.S. 14-218.4(a5))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 06/03/2022

**BILL CONTINUED ON NEXT PAGE**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 828 – Child Abuse – Positive Drug Test [Ed. 1] (cont'd)

**STATUTE**

§ 14-318.4. Child abuse a felony.

**DESCRIPTION**

Subdivision (a7)(2):

A person who

1. is a parent or any other person providing care to or supervision of a child less than 10 years of age
2. whose child tests positive for a controlled substance during the course of that care or supervision, and
3. the presence of the controlled substance is not due to medical treatment prescribed or administered by a licensed health care professional and
4. the presence of the controlled substance in the child's body results in serious physical injury to the child.

**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.

For the purposes of this provision, controlled substance is defined as a controlled substance classified in Schedule I or II under Article 5 of Chapter 90 of the General Statutes.

Serious physical injury is defined as physical injury that causes great pain and suffering and includes serious mental injury.

Child abuse which intentionally inflicts serious physical injury upon or to the child or which results from intentional assault upon the child resulting in serious physical injury to the child is a Class D felony. (G.S. 14-318.4(a))

Child abuse resulting from willful or grossly negligent care of the child showing a reckless disregard for human life and where the act or omission results in serious physical injury to the child is a Class G felony. (G.S. 14-318.4(a5))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class G felony. 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.

**DATE OF REVIEW:** 06/03/2022

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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 828 – Child Abuse – Positive Drug Test [Ed. 1] (cont'd)

**STATUTE**

§ 14-318.4. Child abuse a felony.

**DESCRIPTION**

Subdivision (a7)(3):

A person who

1. is a parent or any other person providing care to or supervision of a child less than 10 years of age
2. whose child tests positive for a controlled substance during the course of that care or supervision, and
3. the presence of the controlled substance is not due to medical treatment prescribed or administered by a licensed health care professional.

**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.

For the purposes of this provision, controlled substance is defined as a controlled substance classified in Schedule I or II under Article 5 of Chapter 90 of the General Statutes.

Child abuse resulting from willful or grossly negligent care of the child showing a reckless disregard for human life and where the act or omission results in serious physical injury to the child is a Class G felony. (G.S. 14-318.4(a5))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 06/03/2022

**IMPACT ANALYSIS NOT REQUESTED YET**

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