

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

REPORT #3

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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 May 14, 2021. 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, 2021.

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 May 14, 2021.

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 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 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">• Reserved for First Degree Murder <p><i>[Reasonably tends to result or does result in:]</i></p>
B	<ul style="list-style-type: none">• Serious debilitating long-term personal injury
C	<ul style="list-style-type: none">• Serious long-term personal injury• Serious long-term or widespread societal injury
D	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Serious personal injury
F	<ul style="list-style-type: none">• Significant personal injury• Serious societal injury
G	<ul style="list-style-type: none">• Serious property loss: Loss from the person or the person's dwelling
H	<ul style="list-style-type: none">• 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	<ul style="list-style-type: none">• Serious property loss: All other felonious property loss• Societal injury
M	<ul style="list-style-type: none">• 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.

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #3 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
May 14, 2021

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 151	Req Active Time Felony Death MV/Boat [Ed. 2]	G.S. 20- 141.4(a1)	D	Consistent		1
		G.S. 75A-10.3(a)	D	Consistent		2
HB 326	ENOUGH/Gaming Machines [Ed. 2]	G.S. 14-309(b)	G	Consistent		3
		G.S. 14-309(c)	G	Inconsistent		4
HB 560	Public Safety Reform [Ed. 3]	G.S. 14-258.4(b)	Mandatory Term	Inconsistent		5
		G.S. 14-258(c)	Mandatory Term	Inconsistent		6
HB 761	Police Vehicle and Equipment Protection Act [Ed. 1]	G.S. 14-56(a1)	H	Inconsistent	Would be consistent with a Class I felony.	7
		G.S. 14-72.9(b)	H	Consistent		9
		G.S. 14-72.9(c)	G	Inconsistent	Would be consistent with a Class F felony.	10
HB 766	No Soliciting Certain Funds/Elections Boards [Ed. 1]	G.S. 163-29(b)	I	Consistent		11
		G.S. 163-37.2(b)	I	Consistent		12
HB 780	End of Life Option Act [Ed. 1]	G.S. 90-326.15	Unclassified	Inconsistent	Under Structured Sentencing, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.	13

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 805	Prevent Rioting and Civil Disorder	G.S. 14-288.2(c1)	F	Inconsistent		14
		G.S. 14-288.2(c1)	E	Consistent		16
		G.S. 14-288.2(e)	E	Inconsistent		17
		G.S. 14-288.2(e1)	D	Inconsistent	Would be consistent with a Class E felony.	19
		G.S. 14-288.9(c)	H	Inconsistent		20
HB 811	Prot. Public Dangrs. Animals/End Animal Cruelty [Ed. 1]	G.S. 19A-77(b)	I	Consistent		22
HB 954	Video Lottery Terminals [Ed. 1]	G.S. 18C-404(a)	H	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	23
		G.S. 18C-404(a)	G	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	24
		G.S. 18C-404(b)	G	Inconsistent	Would be consistent with a Class I felony.	25
		G.S. 18C-404(b)	F	Inconsistent	The felony punishment chart takes a defendant's prior record into account through the Prior Record Level.	26
		G.S. 18C-404(c)	G	Inconsistent	Would be consistent with a Class I felony.	28
		G.S. 18C-404(d)	G	Inconsistent	Would be consistent with a Class I felony.	30
SB 300	Criminal Justice Reform [Ed. 4]	G.S. 14-288.2(c1)	F	Consistent		32

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-223(b)	I	Consistent		34
		G.S. 14-223(c)	F	Consistent		35
		G.S. 132-1.4A(b4)	I	Inconsistent		36

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 151 – Req Active Time Felony Death MV/Boat [Ed. 2]

STATUTE

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

DESCRIPTION

Subsection (a1):

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired driving, and
3. the commission of that offense is the proximate cause of the death.

PUNISHMENT RANGE

CURRENT: Class D felony. Notwithstanding the felony punishment chart, which requires an active sentence, an intermediate punishment is authorized for a defendant who is in Prior Record Level I.

PROPOSED: Class D.

ANALYSIS

Structured Sentencing provides a range of possible minimum sentences and types of punishment based on the offender’s prior record level.

The previous version of this bill proposed language that required special probation (split sentence) with a continuous period of confinement of at least one-fourth the maximum sentence imposed, up to 27 months, for defendants who were sentenced to an intermediate punishment. The Sentencing Commission reviewed HB 151/SB 213 [Ed. 1] on March 19, 2021 and found it to be inconsistent with G.S. 164-41. The Sentencing Commission reviewed other identical versions of that provision in February 2017 in HB 65 and in March 2019 in HB 66 and found it to be inconsistent with the G.S. 164-41.

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 OF REVIEW: 05/14/2021

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

BILL NUMBER/SHORT TITLE: HB 151 – Req Active Time Felony Death MV/Boat [Ed. 2] (cont'd)

STATUTE

§ 75A-10.3. Death or serious injury by impaired boating; repeat offenses.

DESCRIPTION

Subsection (a)

A person who

1. unintentionally causes the death of another person,
2. while engaged in the offense of impaired boating, and
3. the commission of that offense is the proximate cause of the death.

PUNISHMENT RANGE

CURRENT: Class D felony. Notwithstanding the felony punishment chart, which requires an active sentence, an intermediate punishment is authorized for a defendant who is in Prior Record Level I.

PROPOSED: Class D.

ANALYSIS

Structured Sentencing provides a range of possible minimum sentences and types of punishment based on the offender's prior record level.

The previous version of this bill proposed language that required special probation (split sentence) with a continuous period of confinement of at least one-fourth the maximum sentence imposed, up to 27 months, for defendants who were sentenced to an intermediate punishment. The Sentencing Commission reviewed HB 151/SB 213 [Ed. 1] on March 19, 2021 and found it to be inconsistent with G.S. 164-41. The Sentencing Commission reviewed other identical versions of that provision in February 2017 in HB 65 and in March 2019 in HB 66 and found it to be inconsistent with the G.S. 164-41.

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 OF REVIEW: 05/14/2021

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: HB 326 – ENOUGH/Gaming Machines [Ed. 2]

STATUTE

§ 14-309. Violation made criminal.

DESCRIPTION

Subsection (b):

A person who

1. violates the provisions of G.S. 14-306.1A
2. involving the possession for the purpose of operation
3. of five or more machines prohibited by that section.

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.

G.S. 14-306.1A prohibits video gaming machines including slot machines as defined in G.S 14-306(a) and other forms of electrical, mechanical, or computer games.

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: 05/14/2021

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 326 – ENOUGH/Gaming Machines [Ed. 2] (cont'd)

STATUTE

§ 14-309. Violation made criminal.

DESCRIPTION

Subsection (c):

A person who

1. violates the provisions of G.S. 14-306.4(b)
2. involving the possession
3. of five or more machines prohibited by those subsections.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor for the first offense, Class H felony for the second offense, and a Class G felony for a third or subsequent offense.

PROPOSED: 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.

G.S. 14-306.4(b) prohibits electronic machines or devices to do either of the following: (1) conduct a sweepstakes through the use of an entertaining display, including the entry process or the reveal of a prize, or (2) promote a sweepstakes that is conducted through the use of an entertaining display, including the entry process or the reveal of a prize.

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: 05/14/2021

IMPACT ANALYSIS NOT 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: HB 560 – Public Safety Reform [Ed. 3]

STATUTE

§ 14-258.4. Malicious conduct by prisoner.

DESCRIPTION

Subsection (b):

A person who

1. is a prisoner as defined by statute
2. knowingly and willfully
3. exposes genitalia
4. to an employee
5. while the employee is in the performance of the employee's duties.

PUNISHMENT RANGE

CURRENT: Class I felony.

PROPOSED: Class I felony; notwithstanding the felony punishment chart (G.S. 15A-1340.17), a person convicted of a violation of this subsection shall be sentenced to an active punishment with a minimum term of six months.

ANALYSIS

Structured Sentencing provides a range of possible minimum sentences and corresponding maximum sentences based on the offender's prior record level.

The Sentencing Commission reviewed HB 560 [Ed. 1] on April 23, 2021 and found it to be inconsistent with G.S. 164-41. The previous edition of this bill proposed a new punishment range for a Class I felony with a mandatory minimum active term of six months and a maximum term of 12 months.

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 OF REVIEW: 05/14/2021

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

BILL NUMBER/SHORT TITLE: HB 560 – Public Safety Reform [Ed. 3] (cont'd)

STATUTE

§ 14-258. Providing forbidden articles or tools for escape; possessing tools for escape.

DESCRIPTION

Subsection (c) Possessing tools for escape:

A person who

1. is a prisoner as defined by statute
2. possesses
3. a letter, weapon, tool, good, article of clothing, device, or instrument
4. to do any of the following:
 - a. effect an escape or
 - b. aide [*sic*] in an assault or insurrection.

PUNISHMENT RANGE

CURRENT: Class H felony.

PROPOSED: Class H felony; notwithstanding the felony punishment chart (G.S. 15A-1340.17), a person convicted of a violation of this subsection shall be sentenced to an active punishment with a minimum term of 12 months.

ANALYSIS

Structured Sentencing provides a range of possible minimum sentences and corresponding maximum sentences based on the offender's prior record level.

The Sentencing Commission reviewed HB 560 [Ed. 1] on April 23, 2021 and found it to be inconsistent with G.S. 164-41. The previous edition of this bill proposed a new punishment range for a Class H felony with a mandatory minimum active term of 12 months and a maximum term of 24 months.

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 OF REVIEW: 05/14/2021

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: HB 761 – Police Vehicle and Equipment Protection Act [Ed. 1]
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STATUTE

§ 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.

DESCRIPTION

Subsection (a1):

A person who

1. with the intent to commit any felony or larceny therein, breaks or enters any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind, containing any goods, wares, freight, or other thing of value, or
2. after having committed any felony or larceny therein, breaks out of any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind containing any goods, wares, freight, or other thing of value,
3. and both of the following conditions are met:
 - a. The railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.
 - b. The person knows or reasonably should know that the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is owned or operated by any law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.

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.

Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft is a Class I felony. (G.S. 14-56(a))

Breaking or entering buildings is a Class H felony. (G.S. 14-54(a))

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.

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: 05/14/2021

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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 761 – Police Vehicle and Equipment Protection Act [Ed. 1]
(cont'd)

STATUTE

§ 14-72.9. Larceny of law enforcement equipment.

DESCRIPTION

Subsection (b):

A person who

1. commits larceny
2. of law enforcement equipment (as defined by statute)
3. from a law enforcement vehicle (as defined by statute) and
4. the person knows, or reasonably should know, that the vehicle was a law enforcement vehicle and that the property was law enforcement equipment.

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.

Larceny of property worth more than \$1,000 is a Class H felony (G.S. 14-72) and is a Class 1 misdemeanor when the value is \$1,000 or less (G.S. 14-72(a)).

Larceny of record or paper in the custody of the N.C. State Archives; receiving or possessing stolen record or paper is a Class H felony. (G.S. 14-72(b)(5))

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: 05/14/2021

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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 761 – Police Vehicle and Equipment Protection Act [Ed. 1] (cont'd)
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STATUTE

§ 14-72.9. Larceny of law enforcement equipment.

DESCRIPTION

Subsection (c):

A person who

1. commits larceny
2. of law enforcement equipment (as defined by statute)
3. from a law enforcement vehicle (as defined by statute)
4. the person knows, or reasonably should know, that the vehicle was a law enforcement vehicle and that the property was law enforcement equipment and
5. the law enforcement equipment is valued in excess of one thousand dollars (\$1,000).

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.

Second degree burglary is a Class G felony. (G.S. 14-51)

Common law robbery is a Class G felony. (G.S. 14-87.1)

Larceny of property worth more than \$1,000 is a Class H felony (G.S. 14-72) and is a Class 1 misdemeanor when the value is \$1,000 or less (G.S. 14-72(a)).

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 F felony. 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.

DATE OF REVIEW: 05/14/2021

IMPACT ANALYSIS NOT 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 766 – No Soliciting Certain Funds/Elections Boards [Ed. 1]

STATUTE

§ 163-29. Solicitation or acceptance of private funds for election purposes prohibited.

DESCRIPTION

Subsection (b):

The State Board of Elections

1. solicits, takes, or otherwise accepts
2. from any person
3. any contribution, donation, or anything else of value
4. for purposes of conducting State or local elections in this State.

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.

It is a Class I felony for any person to compensate another, or accept compensation, based on the number of returned written requests for absentee ballots under G.S. 163-230.2. (G.S. 163-237(d4))

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: 05/14/2021

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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 766 – No Soliciting Certain Funds/Elections Boards [Ed. 1] (cont'd)

STATUTE

§ 163-37.2. Solicitation or acceptance of private funds for election purposes prohibited.

DESCRIPTION

Subsection (b):

The county board of commissioners, elected municipal officials, or county board of elections

1. solicits, takes, or otherwise accepts
2. from any person
3. any contribution, donation, or anything else of value
4. for purposes of conducting State or local elections in this State.

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.

It is a Class I felony for any person to compensate another, or accept compensation, based on the number of returned written requests for absentee ballots under G.S. 163-230.2. (G.S. 163-237(d4))

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: 05/14/2021

IMPACT ANALYSIS NOT 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 780 – End of Life Option Act [Ed.1]

STATUTE

§ 90-326.15. Felonious activities.

DESCRIPTION

A person who

1. knowingly does any of the following
2. with the intent to cause, interfere with, or prevent
3. a qualified individual's death against the qualified individual's wishes:
 - a. Altering, forging, concealing, or destroying a request for a terminal comfort care drug without the qualified individual's authorization.
 - b. Concealing or destroying a withdrawal or rescission of a request for a terminal comfort care drug without the qualified individual's authorization.
 - c. Concealing or destroying a qualified individual's prescribed terminal comfort care drug without the qualified individual's authorization, or preventing a qualified individual from self-administering the prescribed terminal comfort care drug.
 - d. Coercing or exerting undue influence on a qualified individual to request or to self-administer a terminal comfort care drug for the purpose of ending the qualified individual's life.
 - e. Coercing or exerting undue influence on a qualified individual to prevent the qualified individual from requesting or self-administering a terminal comfort care drug.

PROPOSED OFFENSE CLASS

No proposed class.

ANALYSIS

G.S. 90-326.15 provides that these actions are punishable as a felony.

The Sentencing Commission reviewed a substantially similar provision in May 2019 in HB 879 and in May 2017 in HB 789 and found it to be inconsistent with the Offense Classification Criteria. It was also noted that under Structured Sentencing, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.

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, an offense is assigned to an offense class based on the harm that reasonably tends to result or does result from the conduct.

DATE OF REVIEW: 05/14/21

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

BILL NUMBER/SHORT TITLE: HB 805 – Prevent Rioting and Civil Disorder [Ed. 1]

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (c1):

A person who

1. willfully
2. engages in a riot (as defined in subsection (a)) and
3. in the course and as a result of the riot there is
 - a. property damage in excess of fifteen hundred dollars (\$1,500) or
 - b. serious bodily injury.

OFFENSE CLASS

CURRENT: Class H felony.

PROPOSED: 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.

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.

G.S. 14-288.2(a) defines a riot as “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.”

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4)

Injury to personal property is a Class 1 or Class 2 misdemeanor, depending on the cost of the damage incurred. (G.S. 14-160)

Injury to real property is a Class 1 misdemeanor. (G.S. 14-127)

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.

Failure to disperse is a Class 2 misdemeanor. (G.S. 14-288.5)

Disorderly conduct is a Class 2 misdemeanor. (G.S. 14-288.4(b))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: 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. While this offense can result in serious bodily injury, it can also result in property loss, which is not included in the Offense Classification Criteria for a Class F felony.

DATE OF REVIEW: 05/14/2021

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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 805 – Prevent Rioting and Civil Disorder [Ed. 1] (cont'd)

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (c2):

A person who

1. willfully
2. engages in a riot (as defined in subsection (a)) and
3. in the course and as a result of the riot
4. there is a death.

PROPOSED OFFENSE CLASS

Class E felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

G.S. 14-288.2(a) defines a riot as “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.”

Violation of the Amusement Device Safety Act of NC which causes the serious injury or death of any person is a Class E felony. (G.S. 95-111.13(j))

Patient abuse and neglect where culpably negligent conduct is the proximate cause of a death is a Class E felony. (G.S. 14-32.2)

Felony speeding to elude arrest which is the proximate cause of a death is a Class E felony. (G.S. 20-141.5)

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

Failure to disperse is a Class 2 misdemeanor. (G.S. 14-288.5)

Disorderly conduct is a Class 2 misdemeanor. (G.S. 14-288.4(b))

FINDINGS



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



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



Homicide Offense Classification Criteria are not applicable.

DATE OF REVIEW: 05/14/2021

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

BILL NUMBER/SHORT TITLE: HB 805 – Prevent Rioting and Civil Disorder [Ed. 1] (cont'd)

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (e):

A person who

1. willfully
2. incites or urges another to engage in a riot (as defined in subsection (a)), and
3. such inciting or urging is a contributing cause of a riot in which there is
 - a. property damage in excess of fifteen hundred dollars (\$1,500) or
 - b. serious bodily injury.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

G.S. 14-288.2(a) defines a riot as “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.”

Inciting a riot is currently a Class 1 misdemeanor, but this bill would increase the offense class to a Class A1 misdemeanor. (G.S. 14-288.2(d))

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4)

Injury to personal property is a Class 1 or Class 2 misdemeanor, depending on the cost of the damage incurred. (G.S. 14-160)

Injury to real property is a Class 1 misdemeanor. (G.S. 14-127)

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.

Failure to disperse is a Class 2 misdemeanor. (G.S. 14-288.5)

Disorderly conduct is a Class 2 misdemeanor. (G.S. 14-288.4(b))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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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 805 – Prevent Rioting and Civil Disorder [Ed. 1] (cont'd)

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (e1):

A person who

1. willfully
2. incites or urges another to engage in a riot (as defined in subsection (a)), and
3. such inciting or urging is a contributing cause of a riot in which a death results.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with a partial legal excuse as Class D felonies.

G.S. 14-288.2(a) defines a riot as “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.”

Inciting a riot is currently a Class 1 misdemeanor, but this bill would increase the offense class to a Class A1 misdemeanor. (G.S. 14-288.2(d))

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

Failure to disperse is a Class 2 misdemeanor. (G.S. 14-288.5)

Disorderly conduct is a Class 2 misdemeanor. (G.S. 14-288.4(b))

FINDINGS

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

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

Homicide Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class E felony. The Sentencing Commission recommends classifying offenses that proscribe an unintentional killing by criminal or culpable negligence with aggravating circumstances as Class E felonies.

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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 805 – Prevent Rioting and Civil Disorder [Ed. 1] (cont'd)

STATUTE

§ 14-288.9. Assault on emergency personnel; punishments.

DESCRIPTION

Subsection (c):

A person who

1. commits an assault
2. upon emergency personnel (as defined in subsection (b))
3. in an area:
 - a. in which a state of emergency exists or
 - b. within the immediate vicinity of which a riot is occurring or is imminent.

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.

An assault upon emergency personnel is defined in G.S. 14-288.9(a) as an assault upon any person coming within the definition of “emergency personnel,” which includes law-enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons lawfully engaged in providing essential services during the emergency. (G.S. 14-288.9(b))

Currently, it is a Class I felony to commit an assault causing physical injury upon emergency personnel during a state of emergency or riot. This bill would change the offense classification and remove the physical injury element (G.S. 14-288.9(c)). Under this bill, it would remain a Class F felony to commit an assault upon emergency personnel during a state of emergency or riot with or through the use of any dangerous weapon or substance (G.S. 14-288.9(c)).

Assault inflicting physical injury on a law enforcement officer, probation officer, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility is a Class I felony. (G.S. 14-34.7(c))

Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel is a Class I felony unless the assault inflicts serious bodily injury or uses a deadly weapon other

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.

than a firearm, in which case it is a Class G felony, or unless the person uses a firearm, in which case it is a Class E felony. (G.S. 14-34.6)

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: 05/14/2021

IMPACT ANALYSIS NOT 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 811 – Prot. Public Dangrs. Animals/End Animal Cruelty [Ed. 1]

STATUTE

§ 19A-77. Penalties.

DESCRIPTION

Section (b):

A person who

1. is the owner or custodian of any dangerous wild animal
2. whose act or omission in the care control or containment of that animal
3. results in the animal running loose
4. and causes serious bodily injury to any person.

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. 19A-72 would make it unlawful for any person to possess, sell, transfer, or breed a dangerous wild animal. G.S. 19A-77(a) would make it a class 2 misdemeanor and impose a civil penalty of not more than \$5,000 for a violation of the Article. Section (b) makes it a Class A1 misdemeanor when any dangerous wild animal owner or custodian whose act or omission in the care, control, or containment of that animal results in the animal running loose or causing property damage.

G.S. 113-294(a) makes it unlawful to sell, possess for sale, or buy any wildlife and makes it a Class 2 misdemeanor, punishable by a fine of not less than two hundred fifty dollars (\$250.00), unless a greater penalty is prescribed for the offense in question. G.S. 67-4.3 makes it a Class 1 misdemeanor for an owner of a dangerous dog that attacks a person and causes physical injuries requiring medical treatment in excess of one hundred dollars (\$100.00).

The Sentencing Commission reviewed an identical provision in April 2019 in HB 778 and found it to be consistent with the Offense Classification Criteria for 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.

DATE OF REVIEW: 05/14/2021

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: HB 954 – Video Lottery Terminals [Ed. 1]

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (a):

A person who

1. tampers with
2. a video lottery terminal
3. with the intent to interfere with
4. the proper operation of the video lottery terminal.

PROPOSED OFFENSE CLASS

Class H felony for a second offense.

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.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes.

A “video lottery terminal” is a device that is exempt under G.S. 14-306.1A and is any electronic computerized video game machine that, upon the insertion of a lottery share, the player may play a video lottery game and may receive free games or credits that can be redeemed for cash (not including a machine that directly dispenses coins, cash, or tokens). (G.S. 18C-200(9)).

For a first offense, under G.S. 18C-404(a), the proposed offense is a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 05/14/2021

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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 954 – Video Lottery Terminals [Ed. 1] (cont’d)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (a):

A person who

1. tampers with
2. a video lottery terminal
3. with the intent to interfere with
4. the proper operation of the video lottery terminal.

PROPOSED OFFENSE CLASS

Class G felony for a third or subsequent offense.

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 Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes.

A “video lottery terminal” is a device that is exempt under G.S. 14-306.1A and is any electronic computerized video game machine that, upon the insertion of a lottery share, the player may play a video lottery game and may receive free games or credits that can be redeemed for cash (not including a machine that directly dispenses coins, cash, or tokens). (G.S. 18C-200(9)).

FINDINGS



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



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



Offense Classification Criteria are not applicable.

The Structured Sentencing punishment chart takes a defendant’s prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

DATE OF REVIEW: 05/14/2021

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: HB 954 – Video Lottery Terminals [Ed. 1] (cont'd)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (b):

A person who

1. with intent to manipulate the
 - a. outcome,
 - b. payoff, or
 - c. operation of
2. a video lottery terminal, and
3. does so
4. by physical tampering or other means.

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.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes.

A "video lottery terminal" is a device that is exempt under G.S. 14-306.1A and is any electronic computerized video game machine that, upon the insertion of a lottery share, the player may play a video lottery game and may receive free games or credits that can be redeemed for cash (not including a machine that directly dispenses coins, cash, or tokens). (G.S. 18C-200(9)).

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 750 (except for the proposed offense Class was for a Class 5 felony) finding it inconsistent, but noting it would have been consistent with the Offense Classification Criteria for 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.

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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: HB 954 – Video Lottery Terminals [Ed. 1] (cont'd)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (b):

A person who

1. with intent to manipulate the
 - a. outcome,
 - b. payoff, or
 - c. operation of
2. a video lottery terminal, and
3. does so
4. by physical tampering or other means.

PROPOSED OFFENSE CLASS

Class F felony for any subsequent offense.

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.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes. A "video lottery terminal" is a device that is exempt under G.S. 14-306.1A and is any electronic computerized video game machine that, upon the insertion of a lottery share, the player may play a video lottery game and may receive free games or credits that can be redeemed for cash (not including a machine that directly dispenses coins, cash, or tokens). (G.S. 18C-200(9)).

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 750 (except for the proposed offense Class was for a Class 5 felony) finding it inconsistent, but noting it would have been consistent with the Offense Classification Criteria for 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.

The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with Structured Sentencing.

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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 954 – Video Lottery Terminals [Ed. 1] (cont’d)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (c):

A person who

1. is a video lottery retailer or operator, and
2. a. falsely reports, or
b. fails to report
3. the amount due
4. [as] required by the Commission.

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.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes. A video lottery retailer or operator found guilty of this subsection is also subject to termination of their license by the Commission.

An “operator” is defined as an individual, partnership, corporation, trust, association, joint venture, limited liability company, or other business entity that owns or services a video lottery terminal for which a video lottery terminal permit has been issued by the Commission and that places video lottery terminals or associated equipment for public use in the State of North Carolina. (G.S. 18C-200(6)).

A “video lottery retailer” is defined as a retailer selling shares of video lottery games under contract with the Commission in accordance with Article 5 of this Chapter, as supplemented by this Article. (G.S. 18C-200(8)).

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 750 (except for the proposed offense Class was for a Class 6 felony) finding it inconsistent, but noting it would have been consistent with the Offense Classification Criteria for 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.

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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 954 – Video Lottery Terminals [Ed. 1] (cont’d)

STATUTE

§ 18C-404. Criminal offenses.

DESCRIPTION

Subsection (d):

A person who

1. is a video lottery retailer or operator,
2. pays a prize
3. to any person
4. in an amount
5. less than the specified prize won.

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.

This bill enacts Article 9, Video Lottery Entertainment, as part of Chapter 18C of the General Statutes. A video lottery retailer or operator found guilty of this subsection is also subject to termination of their license by the Commission.

An “operator” is defined as an individual, partnership, corporation, trust, association, joint venture, limited liability company, or other business entity that owns or services a video lottery terminal for which a video lottery terminal permit has been issued by the Commission and that places video lottery terminals or associated equipment for public use in the State of North Carolina. (G.S. 18C-200(6)).

A “video lottery retailer” is defined as a retailer selling shares of video lottery games under contract with the Commission in accordance with Article 5 of this Chapter, as supplemented by this Article. (G.S. 18C-200(8)).

The Sentencing Commission reviewed a substantially similar provision in May 2017 in HB 750 (except for the proposed offense Class was for a Class 5 felony) finding it inconsistent, but noting it would have been consistent with the Offense Classification Criteria for 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: 05/14/2021

IMPACT ANALYSIS NOT 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 300 – Criminal Justice Reform [Ed. 4]

STATUTE

§ 14-288.2. Riot; inciting to riot; punishments.

DESCRIPTION

Subsection (c1):

A person who

1. willfully
2. engages in a riot (as defined in subsection (a)) and
3. in the course of the riot the person
 - a. causes serious bodily injury to another or
 - b. brandishes a dangerous weapon or uses a dangerous substance.

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.

G.S. 14-288.2(a) defines a riot as “a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.”

Proposed G.S. 14-288.2(f) provides that “dangerous substance” may include, but is not limited to, tear gas or pepper spray. Proposed G.S. 14-288.2(g) provides that mere presence alone without an overt act is not sufficient to sustain a conviction pursuant to this section.

Currently, it is a Class H felony to willfully engage in a riot if, in the course and as a result of the riot, there is serious bodily injury or such participant in the riot has in his possession any dangerous weapon or substance. G.S. 14-288.2(c). Edition 1 of this bill proposed changing the offense classification from a Class H felony to a Class G felony. The Sentencing Commission reviewed that proposal in March 2021 and found that it was inconsistent with the Offense Classification Criteria for a Class G felony, but that it 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.

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.

Assault inflicting serious bodily injury is a Class F felony. (G.S. 14-32.4)

Failure to disperse is a Class 2 misdemeanor. (G.S. 14-288.5)

Disorderly conduct is a Class 2 misdemeanor. (G.S. 14-288.4(b))

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: 05/14/2021

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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 300 – Criminal Justice Reform [Ed. 4] (cont'd)

STATUTE

§ 14-223. Resisting officers.

DESCRIPTION

Subsection (b):

A person who

1. willfully and unlawfully
2. resists, delays, or obstructs a public officer in discharging or attempting to discharge an official duty and
3. the resistance, delay, or obstruction is the proximate cause of a public officer's serious injury.

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 proposed statute does not define "serious injury."

Resisting an officer is a Class 2 misdemeanor. (G.S. 14-223)

Assault inflicting physical injury on a law enforcement officer, probation officer, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility is a Class I felony. (G.S. 14-34.7(c))

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: 05/14/2021

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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: SB 300 – Criminal Justice Reform [Ed. 4] (cont'd)

STATUTE

§ 14-223. Resisting officers.

DESCRIPTION

Subsection (c):

A person who

1. willfully and unlawfully
2. resists, delays, or obstructs a public officer in discharging or attempting to discharge an official duty and
3. the resistance, delay, or obstruction is the proximate cause of a public officer's serious bodily injury.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

Proposed G.S. 14-223(d) provides that, for the purposes of this section, "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.

Resisting an officer is a Class 2 misdemeanor. (G.S. 14-223)

Assault inflicting serious bodily injury on a law enforcement officer, probation officer, or parole officer is a Class F felony. (G.S. 14-34.7(a))

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: 05/14/2021

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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: SB 300 – Criminal Justice Reform [Ed. 4] (cont'd)

STATUTE

§ 132-1.4A. Law enforcement agency recordings.

DESCRIPTION

Subsection (b4):

A person who

1. knowingly
2. disseminates
3. a recording or a copy of a recording disclosed pursuant to subsection (b1).

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.

Proposed G.S. 132-1.4A(b1) provides that, if requested, any portion of a recording in the custody of a law enforcement agency which depicts a death or serious bodily injury shall be disclosed unredacted to a personal representative of the deceased, the injured individual, or a personal representative on behalf of the injured individual, within five business days unless (1) the requestor requests to receive disclosure more than five days business days after submitting the request or (2) the law enforcement agency petitions the court as provided in subsection (b3).

Under this bill, it would be a Class 1 misdemeanor for a person who receives disclosure pursuant to this section to record, copy, or attempt to record or copy a recording disclosed pursuant to subsection (b1).

Unauthorized disclosure of autopsy photographs, videos, or audio recordings is a Class 2 misdemeanor. (G.S. 130A-389.1(c))

FINDINGS



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



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



Offense Classification Criteria are not applicable.

Note: This offense would also be appropriate as a misdemeanor offense.

DATE OF REVIEW: 05/14/2021

IMPACT ANALYSIS NOT REQUESTED YET