

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

## REPORT #4

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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 September 10, 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 September 10, 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"><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 #4 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS**  
**September 10, 2021**

<b>Bill</b>	<b>Short Title</b>	<b>Provision</b>	<b>Proposal</b>	<b>Finding</b>	<b>Commentary</b>	<b>Page</b>
SB 711	NC Compassionate Care Act [Ed. 5]	G.S. 90-113.121(a)	G	Inconsistent		<a href="#">1</a>
		G.S. 90-113.121(b)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">2</a>
		G.S. 90-113.121(d)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">3</a>
		G.S. 90-113.121(f)	I	Inconsistent		<a href="#">5</a>
		G.S. 90-113.121(g)	One class higher plus 12 months	Inconsistent		<a href="#">6</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:** SB 711 – NC Compassionate Care Act [Ed. 5]

**STATUTE**

§ 90-113.121. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (a):

A person who

1. manufactures, sells, delivers, or possesses with intent to manufacture, sell, or deliver
2. cannabis
3. in violation of Article 5H of Chapter 90 of the General Statutes, the North Carolina Compassionate Care Act,
4. at a medical cannabis center or production facility.

**PROPOSED OFFENSE CLASS**

Class G felony.

**ANALYSIS**

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

The criteria were not used in the classification of the drug offenses. The Commission reviews proposed controlled substances classifications by comparison to existing offenses.

This bill defines cannabis as marijuana as defined in G.S. 90-87(16).

Marijuana and tetrahydrocannabinols are Schedule VI controlled substances. (G.S. 90-94)

Manufacture, delivery, or possession with intent to manufacture, sell, or deliver a Schedule VI controlled substance (non-trafficking amount) is a Class I felony. (G.S. 90-95(b)(2))

Sale of a Schedule VI controlled substance (non-trafficking amount) is a Class H felony. (G.S. 90-95(b)(2))

This bill defines a medical cannabis center as a facility owned and operated by a supplier that possesses and dispenses cannabis and cannabis-infused products to registry identification cardholders for human consumption and a production facility as a facility owned and operated by a supplier that cultivates, possesses, and produces cannabis and cannabis-infused products.

**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:** 09/10/2021

**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:** SB 711 – NC Compassionate Care Act [Ed. 5] (cont'd)

**STATUTE**

§ 90-113.121. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (b):

A person who

1. creates, sells, delivers, or possesses with intent to sell or deliver
2. counterfeit cannabis
3. in violation of Article 5H of Chapter 90 of the General Statutes, the North Carolina Compassionate Care Act,
4. at a medical cannabis center or production facility.

**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.

The criteria were not used in the classification of the drug offenses. The Commission reviews proposed controlled substances classifications by comparison to existing offenses.

Creation, sale, or delivery, or possession with intent to sell or deliver a counterfeit controlled substance is a Class I felony. (G.S. 90-95(c))

**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 the creation, sale, or delivery, or possession with intent to sell or deliver a counterfeit controlled substance (G.S. 90-95(c)) as a Class I felony.

**DATE OF REVIEW:** 09/10/2021

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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 711 – NC Compassionate Care Act [Ed. 5] (cont'd)

**STATUTE**

§ 90-113.121. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (d):

A person who

1. possesses
2. an amount of cannabis that exceeds 1 ½ ounces
3. in violation of Article 5H of Chapter 90 of the General Statutes, the North Carolina Compassionate Care Act,
4. at a medical cannabis center or production facility.

**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.

The criteria were not used in the classification of the drug offenses. The Commission reviews proposed controlled substances classifications by comparison to existing offenses.

This bill would make it a Class A1 misdemeanor to possess an amount of cannabis up to 1 ½ ounces in violation of Article 5H of Chapter 90 of the General Statutes, the NC Compassionate Care Act, at a medical cannabis center or production facility.

Possession of more than 1 ½ ounces of marijuana is a Class I felony. (G.S. 90-95(c))

Possession of more than ½ ounce but less than 1 ½ ounces of marijuana is a Class 1 misdemeanor. (G.S. 90-95(d)(4))

Possession of less than ½ ounce of marijuana is a Class 3 misdemeanor. (G.S. 90-95(d)(4))

## FINDINGS

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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 the possession of more than 1 ½ ounces of marijuana (G.S. 90-95(c)) as a Class I felony.

**DATE OF REVIEW:** 09/10/2021

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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 711 – NC Compassionate Care Act [Ed. 5] (cont'd)

**STATUTE**

§ 90-113.121. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (f):

A person who

1. has been issued a valid registry identification card
2. who is found to be in possession
3. of cannabis
4. in violation of Article 5H of Chapter 90 of the General Statutes, the North Carolina Compassionate Care Act.

**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 criteria were not used in the classification of the drug offenses. The Commission reviews proposed controlled substances classifications by comparison to existing offenses.

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

Possession of a Schedule I controlled substance is a Class I felony. (G.S. 90-95(d)(1))

Possession of more than four dosage units of Hydromorphone, more than 100 dosage units of a Schedule II, III, or IV controlled substance, or any amount of Methamphetamine, Amphetamine, Cocaine, or Phencyclidine or derivative thereof is a Class I felony. (G.S. 90-95(d)(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:** 09/10/2021

**BILL CONTINUED ON NEXT PAGE**

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 711 – NC Compassionate Care Act [Ed. 5] (cont'd)

**STATUTE**

§ 90-113.121. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (g):

A person who

1. is convicted of a violation of G.S. 90-95(h)(1) (trafficking in marijuana)
2. and it is found that the offense was committed
  - a. at a medical cannabis facility or
  - b. with cannabis from a medical cannabis center or production facility.

**PUNISHMENT RANGE**

**CURRENT (if applicable):** Mandatory active sentence with a single minimum term of months and a maximum term of months and specified minimum fine based on the quantity of the controlled substance.

**PROPOSED:** One class higher than the principal felony for which the person was convicted, and an additional 12 months added to the mandatory minimum sentence. No defendant sentenced pursuant to this provision shall be sentenced at a level higher than a Class C felony.

**ANALYSIS**

Drug trafficking offenses are not sentenced under Structured Sentencing.

Trafficking in excess of 10 pounds but less than 50 pounds of marijuana is a Class H felony, with a minimum term of 25 months and a maximum term of 39 months active, and a fine of at least \$5,000.

Trafficking at least 50 pounds but less than 2,000 pounds of marijuana is a Class G felony, with a minimum term of 35 months and a maximum term of 51 months active, and a fine of at least \$25,000.

Trafficking at least 2,000 pounds but less than 10,000 pounds of marijuana is a Class F felony, with a minimum term of 70 months and a maximum term of 93 months active, and a fine of at least \$50,000.

Trafficking 10,000 pounds of marijuana or more is a Class D felony, with a minimum term of 175 months and a maximum term of 222 months active, and a fine of at least \$200,000.

**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:** 09/10/2021

**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.