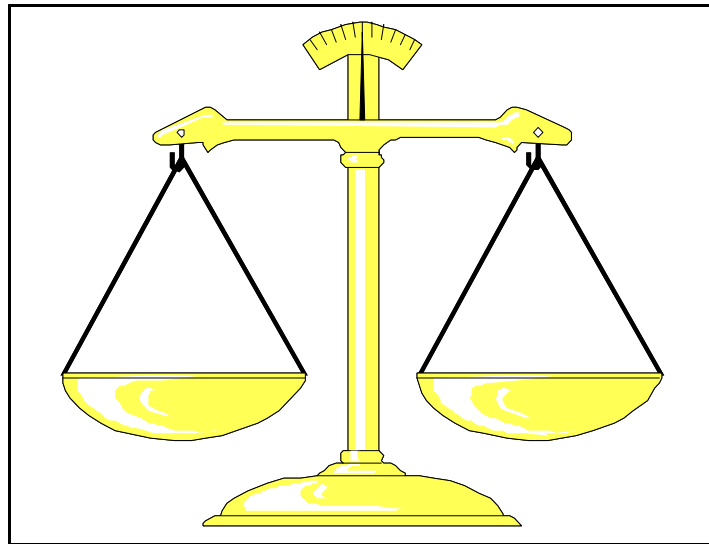


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #2 ON PROPOSED LEGISLATION
PURSUANT TO N.C.G.S. 164-43***

***SUBMITTED TO THE 2011 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2011***

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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 3, 2011. 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, 2011.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on June 3, 2011.

The fact that the Commission found a bill to be either consistent or inconsistent with the structured sentencing offense classification criteria does not imply either support for or

opposition to the bill. In this report, the Commission has taken no position on the merits of any bill other than those specifically proposed by the Commission.

THE OFFENSE CLASSIFICATION CRITERIA

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

The Commission defined three general types of harms: 1) harms to person (including both physical and mental injury); 2) harms to property; and 3) harms to society (violations of public order and welfare, violations of judicial or governmental operations, and/or violations of public morality). Through considerable discussion and debate, the Commission grouped these harms into a ten-level hierarchy which served as the basis for the Commission's classifications (refer to the classification criteria on the following page). Once the classification criteria was established, the Commission reviewed the individual elements of all felonies in North Carolina and assigned each felony to a specific offense class based on how closely the elements of the crime matched the classification criteria.

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

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

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

In 2004, the General Assembly noted that there were criteria for the classification of felony offenses but not for misdemeanor offenses. It asked the Commission to study the classification of misdemeanor offenses and to develop a system for classifying them on the basis of their severity.

The Commission developed a misdemeanor offense classification system based on the type and degree of harm that results or tends to result from an offense (refer to the classification criteria on the following pages). This is similar to the felony offense classification system. It uses the same types of harm (person, property, and society) and degrees of harm (serious, significant, and minor). The Commission divided the criteria into four groups to conform to the four misdemeanor offense classes. The misdemeanor criteria are separate from the felony criteria because the harms that result from the misdemeanor offenses are viewed as being separate from the harms that result from the felony offenses.

The Commission then reviewed the most frequently convicted misdemeanor offenses and recommended reclassifying some of them based on a comparison of the elements of the crimes to the criteria. The Commission also decided that it would use the misdemeanor offense classification criteria for the classification of all new misdemeanor offenses and the reclassification of existing misdemeanor offenses proposed in the future. This report includes a comparison of offenses proposed in this session to the misdemeanor offense classification criteria.

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

- B** • Serious debilitating long-term personal injury

- C** • Serious long-term personal injury
• Serious long-term or widespread societal injury

- D** • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling

- E** • Serious personal injury

- F** • Significant personal injury
• Serious societal injury

- G** • Serious property loss
Loss from the person or the person's dwelling

- H** • Serious property loss:
Loss from any structure designed to house or secure any activity or property
Loss occasioned by the taking or removing of property
Loss occasioned by breach of trust, formal or informal
- Personal injury
 - Significant societal injury

- I** • Serious property loss:
All other felonious property loss
- Societal injury

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.

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

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

MISDEMEANOR OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

[A misdemeanor offense that reasonably tends to result or does result in]:

- | | | |
|-----------|-----|--|
| A1 | (a) | Serious injury to person |
| | (b) | Battery of a person who is a vulnerable victim or a member of a protected class |
| 1 | (a) | Significant injury to person |
| | (b) | Serious injury to property |
| | (c) | Serious injury to society |
| 2 | (a) | Significant injury to property |
| | (b) | Significant injury to society |
| | (c) | Assault or affray against a person who is a vulnerable victim or a member of a protected class |
| 3 | (a) | Minor injury to person |
| | (b) | Minor injury to property |
| | (c) | Minor injury to society |

* 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 drug offenses, impaired driving offenses, or homicide offenses.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 36 – Government Contractors Must Use E-Verify [Ed.2]

STATUTE

§ 64-11. Contractors must use E-Verify; certification required.

DESCRIPTION

A person who

1. contracts with a public entity
2. to provide any service or product
3. and knowingly submits
4. a false certification that
 - a. the contractor is registered and participates in E-Verify
 - b. all subcontractors have provided written certification of their participation in E-Verify
 - c. the contractor has not been convicted under this section within one year of this certification.

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.

E-Verify is a federal program to verify the work authorization of newly hired employees.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 36 – Government Contractors Must Use E-Verify [Ed.2]
(cont'd)

STATUTE

§ 64-12. Subcontractors must use E-Verify; certification required.

DESCRIPTION

A person who

1. furnishes products or services
 - a. to a contractor or another subcontractor
 - b. under, or pursuant to, a contract between a contractor and a public entity
2. and knowingly submits
3. a false certification that the person
 - a. is registered and participates in E-Verify, and
 - b. has not been convicted under this section within one year of the certification.

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.

E-Verify is a federal program to verify the work authorization of newly hired employees.

This section applies to “[a]ny person or entity other than a contractor who furnishes construction or repair work, apparatus, supplies, materials, equipment, services, or other products to a contractor or another subcontractor with a good faith and reasonable belief that the goods or services were intended for use in the contract between a contractor and a public entity.” G.S. 64-10(4).

FINDINGS

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

DATE OF REVIEW: 06/03/11

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 54 – Habitual Misdemeanor Larceny [Ed.4]

STATUTE

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

DESCRIPTION

A person who

1. commits larceny
2. after begin convicted at least seven times
 - a. while represented by counsel, or
 - b. after waiving counsel
3. of any
 - a. larceny offense under G.S. 14-72,
 - b. offense deemed or punishable as larceny under G.S. 14-72, or
 - c. substantially similar offense in another jurisdiction.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 14-72(a)).

ANALYSIS

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

If a person is convicted of multiple misdemeanor larceny offenses in a single session of district court or week of superior court or court in another jurisdiction, only one of the convictions may be used as a prior conviction, except that offenses committed in separate counties shall count as separate convictions.

This Commission reviewed a substantially similar provision in HB 54 [Ed.2] in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 200 – Appropriations Act of 2011 [Ed.7]

STATUTE

§ 113-221.3. Monitoring program for State coastal fishing and recreation waters; ~~development and implementation of program.~~ removal or destruction of warning signs.

DESCRIPTION

A person who

1. removes, destroys, damages, defaces, mutilates, or otherwise interferes with
2. a sign posted by the Department of Environment and Natural Resources
3. providing information on the water quality of coastal recreation waters.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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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 200 – Appropriations Act of 2011 [Ed.7] (cont'd)

STATUTE

§ 113-221.3. Monitoring program for State coastal fishing and recreation waters; ~~development and implementation of program.~~ removal or destruction of warning signs.

DESCRIPTION

A person who

1. without just cause or excuse
2. possesses
3. a sign posted by the Department of Environment and Natural Resources
4. providing information on the water quality of coastal recreation waters.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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 227 – Disturbing/Dismembering Human Remains [Ed.2]

STATUTE

§ 14-401.22 Concealment of ~~death~~-death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subdivision (c)(1):

A person who

1. disturbs, vandalizes, or desecrates by any means
2. human remains.

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.

“Human remains” is defined as “any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone.” G.S. 14-401.22(e).

It is a Class H felony to knowingly and willfully disturb, destroy, remove, vandalize, or desecrate human remains that have been interred in a cemetery. G.S. 14-149(a1).

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 227 – Disturbing/Dismembering Human Remains [Ed.2]
(cont'd)

STATUTE

§ 14-401.22 Concealment of ~~death~~-death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subdivision (c)(ii):

A person who

1. commits or attempts to commit an act of sexual penetration upon
2. human remains.

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.

“Human remains” is defined as “any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone.” G.S. 14-401.22(e).

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 227 – Disturbing/Dismembering Human Remains [Ed.2]
(cont'd)

STATUTE

§ 14-401.22 Concealment of ~~death~~-death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subdivision (d):

A person who

1. attempts to conceal
2. evidence of another's death
3. by knowingly and willfully dismembering or destroying human remains.

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.

“Human remains” is defined as “any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone.” G.S. 14-401.22(e).

It is a Class I felony to secretly bury or dispose of a dead human body with the intent to conceal the person's death. G.S. 14-401.22(a).

It is a Class A1 misdemeanor to aid an abet concealment of a person's death. G.S. 14-401.22(b).

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 227 – Disturbing/Dismembering Human Remains [Ed.2]
(cont'd)

STATUTE

§ 14-401.22 Concealment of ~~death~~-death; disturbing human remains; dismembering human remains.

DESCRIPTION

Subdivision (e):

A person who

1. attempts to conceal
2. evidence of another's death
3. by knowingly and willfully dismembering or destroying human remains,
4. knowing or having reason to know the person did not die of natural causes.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

“Human remains” is defined as “any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone.” G.S. 14-401.22(e).

It is a Class I felony to secretly bury or dispose of a dead human body with the intent to conceal the person's death. G.S. 14-401.22(a).

It is a Class A1 misdemeanor to aid an abet concealment of a person's death. G.S. 14-401.22(b).

Common law obstruction of justice is a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 408 – Amend Criminal Discovery Laws [Ed.2]

STATUTE

§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

DESCRIPTION

A person who

1. willfully omits or misrepresents
2. evidence or information
3. from the complete files of a law enforcement or investigatory agency or prosecutor’s office involved in the investigation of the crimes committed or the prosecution of the defendant
4. as required to be
 - a. disclosed by the State to the defendant pursuant to subdivision (a)(1), or
 - b. provided by the law enforcement or investigatory agency to the prosecutor's office pursuant to subsection (c).

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.

FINDINGS

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

DATE OF REVIEW: 06/03/11

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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 408 – Amend Criminal Discovery Laws [Ed.2] (cont'd)

STATUTE

§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

DESCRIPTION

A person who

1. willfully omits or misrepresents
2. evidence or information
3. required to be disclosed under this section
4. other than the files of all law enforcement and investigatory agencies and prosecutor's offices involved in the investigation of the crimes committed or the prosecution of the defendant.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Information covered by this provision includes (1) the prosecutor's notice to the defendant or any expert witnesses that the State expects to call at trial, with a report of the results of any tests or examinations conducted by the expert, the expert's curriculum vitae, the expert's opinion, and the underlying basis therefore, and (2) the prosecutor's list of witnesses, which must be provided to the defendant at the beginning of jury selection. G.S. 15A-903(a)(2)-(3).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 408: AMEND CRIMINAL DISCOVERY LAWS

PREPARED: May 13, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates two new offenses, a Class H felony and a Class 1 misdemeanor, by the addition of subsection (d) to G.S. 15A-903, Disclosure of evidence by the State – Information subject to disclosure.

G.S. 15A-903(d) makes it a Class H felony for any person to willfully omit or misrepresent evidence or information required to be disclosed or provided pursuant to G.S. 15A-903(a)(1) or G.S. 15A-903(c). G.S. 15A-903(a)(1) provides that upon motion of the defendant, the court must order the State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutor's offices involved in the investigation of the crimes committed or the prosecution of the defendant. G.S. 15A-903(c) provides that on a timely basis, law enforcement and investigatory agencies shall make available to the prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant.

Since the proposed section creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009/10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

G.S. 15A-903(d) also creates a new Class 1 misdemeanor for willful omission or misrepresentation of evidence or information required to be disclosed pursuant to any other provision of G.S. 15A-903. G.S. 15A-903(a)(2) - (3) require the prosecuting attorney to give notice to the defendant of any expert witnesses and a written list of all other witnesses who the State reasonably expects to call during trial, and G.S. 15A-903(b) provides that if the State voluntarily provides disclosure to the defendant, it shall be to the same extent as that required by G.S. 15A-903(a).

Since the proposed section creates a new offense, the Sentencing Commission has no historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

Effective December 1, 2011, and applies to cases pending on that date and to cases filed on or after that date.

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 451 – DWLR Penalties Increased/Vehicle Seizures. [Ed.2]

STATUTE

§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

DESCRIPTION

A person who

1. drives any motor vehicle
2. upon the highways of the State
3. while the person’s driver’s license is revoked
4. having two or more prior convictions for driving while license revoked under subsection (a).

PROPOSED OFFENSE CLASS

Class A1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

Driving while license revoked is a Class 1 misdemeanor under G.S. 20-28(a).

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

On April 8, 2011, the Commission reviewed a similar provision HB 451 [Ed.1] and found this offense to be inconsistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 1 misdemeanor.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 451: DWLR PENALTIES INCREASED/VEHICLE SEIZURES

PREPARED: APRIL 26, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

Section 1. This section amends G.S. 20-28, Unlawful to drive while license revoked, after notification, or while disqualified. Currently, subsection (a) makes it a Class 1 misdemeanor for a person whose driver's license has been revoked to drive a motor vehicle on a State highway while the license is revoked (DWLR). The bill adds subdivision (a)(ii) which makes it a Class A1 misdemeanor for a person to drive with a revoked license after having two prior DWLR convictions under 20-28(a)(i).¹ There is no time limit on the two prior convictions.

In FY 2009/10, there were 30,587 convictions for DWLR. Of these convictions, 15,247 had two or more prior conviction points. While the AOC database contains information on the number of prior record/conviction points, it does not contain information about the specific offenses that are used to calculate the number of prior record/conviction points. Therefore, it is not known how many of the 15,247 offenders with two or more prior conviction points had two prior DWLR convictions and would be reclassified from a Class 1 misdemeanor to a Class A1 misdemeanor under the proposed bill.²

In FY 2009/10, 32% of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 69 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. If a large number of offenders were to be convicted as Class A1 misdemeanor offenders instead of as Class 1 misdemeanor offenders, the impact on local jail populations could be substantial. Impact on the prison population would occur when the sentence imposed is greater than 90 days. Under the misdemeanor punishment chart, the only offenders convicted of a Class A1 misdemeanor who can receive a sentence length of greater than 90 days are those with 5 or more prior conviction points³ (with a sentence range of 1-150 days). Of the DWLR convictions, 9,324 had five or more prior conviction points. It is not known how many of the 9,324 offenders with five or more prior conviction points had two prior DWLR convictions or how many would receive sentences of greater than 90 days under the proposed bill. If a large number of these convictions would be reclassified to Class A1 and would receive sentences of 90 days or more, the impact on the prison population could be substantial. Additional prison impact would occur for any Class A1 offenders in Prior Conviction Level II who receive consecutive sentences totaling more than 90 days.

¹ The bill also adds subsection G.S. 20-28(e) (Fines), to require that a person convicted of under G.S. 20-28(a) shall be fined at least \$250 for a first offense, \$1,000 for a second offense, and \$2,500 for a third or subsequent offense.

² This assumes that the two prior DWLR convictions must be obtained during separate weeks or sessions of court. (See the definition of prior convictions under Structured Sentencing (G.S. 15A-1340.11(7))).

³ This analysis assumes that the offender's two prior DWLR convictions would count toward the Prior Conviction Level (PCL), rather than being excluded as elements of the Class A1 misdemeanor offense.

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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.3]

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6a):

A person who:

1. disturbs or removes
2. galax or Venus flytrap
3. from another person's land
4. without written permission
 - a. from the owner,
 - b. dated, and
 - c. valid for no more than 180 days

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

The Commission reviewed an identical provision in HB 476 [Ed.1] on April 8, 2011, and found that it was inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor but would be consistent with a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.3]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6b):

A person who:

1. buys galax
2. outside of a buying season as provided by the NC Plant Conservation Board
3. without obtaining the required documents from the seller.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

The Commission reviewed an identical provision in HB 476 [Ed.1] on April 8, 2011, and found that it was inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor but would be consistent with a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.3]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6c):

A person who:

1. buys a Venus flytrap
2. outside of a buying season as provided by the NC Plant Conservation Board
3. without obtaining the required documents from the seller.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

The Commission reviewed an identical provision in HB 476 [Ed.1] on April 8, 2011, and found that it was inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor but would be consistent with a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.3]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6d):

A person who:

1. buys
2. more than five pounds of galax
3. for resale or trade
4. without
 - a. a copy of the landowner's written permission, and
 - b. confirmation of the collection date.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

The Commission reviewed an similar provision in HB 476 [Ed.1] on April 8, 2011, and found that it was inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor but would be consistent with a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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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 476 – Protect Galax & Venus Flytrap/WRC Rule Fines [Ed.3]
(cont'd)

STATUTE

§ 106-202.19. Unlawful acts; penalties; enforcement.

DESCRIPTION

Subpart (a)(6e):

A person who:

1. buys
2. more than 50 Venus flytrap plants
3. for resale or trade
4. without fully complying with applicable regulations.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 106-202.19(a1)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

The Commission reviewed a similar provision involving more than 5 pounds of Venus flytrap in HB 476 [Ed.1] on April 8, 2011, and found that it was inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor but would be consistent with a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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 512 – Rendering Act Amendments [Ed.2]

STATUTE

§ 14-79.2. Larceny of waste kitchen grease.

DESCRIPTION

Subsection (2):

A person who

1. either
 - a. takes and carries away, or
 - b. aids in taking and carrying away
2. waste kitchen grease in a container
 - a. bearing notice that unauthorized removal is prohibited without the owner’s written consent
 - b. having a value of more than \$1,000.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss 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 with a value exceeding \$1,000 is a Class H felony. G.S. 14-72(a).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 512 – Rendering Act Amendments [Ed.2] (cont’d)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subsection (d):

A person who:

1. is conducting rendering operations or collecting raw material, and
2. collects or transports waste kitchen grease without
 - a. possessing proof of compliance with the licensure requirements of Article 14A (Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection and Processing), and
 - b. conspicuously displaying the licensee's name and the license number in letters not less than three inches high on any vehicle used for the transportation of waste kitchen grease.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Raw material” is inedible whole or portions of animal or poultry carcasses. G.S. 106-168.1(3).

This offense does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, solely for acting as a collector of waste kitchen grease, or to a farmer collecting waste kitchen grease for a use related to the farm.

In April 2011, the Commission reviewed an identical provision in HB 512 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 512 – Rendering Act Amendments [Ed.2] (cont'd)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(1):

A person who:

1. is conducting rendering operations or collecting raw material, and
2. sells or offers for sale
3. waste kitchen grease
4. to any person unlicensed under Article 14A (Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection and Processing)
5. knowing the person will transport or process it in violation of the Article.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Raw material” is inedible whole or portions of animal or poultry carcasses. G.S. 106-168.1(3).

This offense does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, solely for acting as a collector of waste kitchen grease, or to a farmer collecting waste kitchen grease for a use related to the farm.

In April 2011, the Commission reviewed an identical provision in HB 512 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 512 – Rendering Act Amendments [Ed.2] (cont’d)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(2):

A person who:

1. is conducting rendering operations or collecting raw material, and
2. steals, misappropriates, contaminates, or damages
 - a. any waste kitchen grease container, or
 - b. grease therein.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Raw material” is inedible whole or portions of animal or poultry carcasses. G.S. 106-168.1(3).

This offense does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, solely for acting as a collector of waste kitchen grease, or to a farmer collecting waste kitchen grease for a use related to the farm.

In April 2011, the Commission reviewed an identical provision in HB 512 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 512 – Rendering Act Amendments [Ed.2] (cont’d)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(3):

A person who:

1. is conducting rendering operations, or collecting raw material
2. and
 - a. takes or possesses waste kitchen grease from a collector that is not licensed under this section (unless otherwise allowed under Article 14A), or
 - b. knowingly takes possession of waste kitchen grease that has been stolen.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Raw material” is inedible whole or portions of animal or poultry carcasses. G.S. 106-168.1(3).

This offense does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, solely for acting as a collector of waste kitchen grease, or to a farmer collecting waste kitchen grease for a use related to the farm.

In April 2011, the Commission reviewed an identical provision in HB 512 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 512 – Rendering Act Amendments [Ed.2] (cont’d)

STATUTE

§ 106-168.14A. Collectors of waste kitchen grease subject to certain provisions.

DESCRIPTION

Subdivision (e)(4):

A person who:

1. is conducting rendering operations or collecting raw material, and
2. places a label on a waste kitchen grease container owned by another person
3. in order to assert ownership over the container.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 106-168.15).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Raw material” is inedible whole or portions of animal or poultry carcasses. G.S. 106-168.1(3).

This offense does not apply to a person subject to licensure under G.S. 106-168.2, as amended by HB 512, solely for acting as a collector of waste kitchen grease, or to a farmer collecting waste kitchen grease for a use related to the farm.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 512 – Rendering Act Amendments [Ed.2] (cont’d)

STATUTE

§ 14-79.2. Larceny of waste kitchen grease.

DESCRIPTION

Subsection (1):

A person who

1. either
 - a. takes and carries away, or
 - b. aids in taking and carrying away
2. waste kitchen grease in a container
 - a. bearing notice that unauthorized removal is prohibited without the owner’s written consent
 - b. having a value of \$1,000 or less.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Larceny of property with a value of \$1,000 or less is a Class 1 misdemeanor. G.S. 14-72(a).

FINDINGS

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

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 512: RENDERING ACT AMENDMENTS

PREPARED: MAY 11, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. Chapter 106, Article 14A (Licensing and Regulation of Rendering Plants, Rendering Operations, and Waste Kitchen Grease Collection and Processing), thereby expanding the scope of conduct subject to the existing Class 1 misdemeanor offense in G.S. 106.168.15, Violation a misdemeanor. It also creates a new Class 1 misdemeanor and Class H felony by enacting G.S. 14-79.2, Larceny of waste kitchen grease.

SECTION 1.

The bill amends G.S. Chapter 106, Article 14A, to establish a licensure requirement for (1) the storing or processing of waste kitchen grease at a waste kitchen grease operation, and (2) acting as a collector of waste kitchen grease. **However**, the criminal enforcement provision in Article 14A, found in G.S. 106-168.15, is not amended to apply to these new waste kitchen grease licensees. The bill would maintain the statute in its current form, under which it is a Class 1 misdemeanor to conduct rendering operations or collect raw material (*i.e.*, inedible animal carcasses or portions thereof) in violation of the provisions of the Article. By amending Article 14A, the bill does increase the potential criminal exposure of persons engaged in rendering operations and collectors of raw material under G.S. 106-168.15, by further regulating their conduct.¹

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 106-168.15. The lack of an AOC offense code indicates that this offense is infrequently charged and/or infrequently results in convictions. It is, therefore, unknown how many convictions occurred under G.S. 106-168.15 in FY 2009/10, or how many additional convictions may result from the proposed broadening of the statute. In FY 2009/10, 24% of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 2.

G.S. 14-79.2. Larceny of waste kitchen grease.

Subsection (1) makes it a Class 1 misdemeanor to take and carry away, or aid in taking and carrying away, any waste kitchen grease within a container bearing the name of the owner and a notice that unauthorized removal is prohibited without the owner's written consent, if the value of the container (or the container and the grease) is \$1,000 or less.

¹For example, the bill would prohibit a collector of raw material to do the following: (1) sell or offer for sale to any unlicensed person any waste kitchen grease, knowing such unlicensed person would transport or process the grease in violation of the Article; (2) steal, misappropriate, contaminate, or damage any waste kitchen grease container or grease therein; or (3) take or possess waste kitchen grease from a collector that is not licensed unless otherwise allowed under Article 14A, or knowingly take possession of stolen waste kitchen grease.

Larceny (and aiding in larceny) of any property valued at or below \$1,000 is already a Class 1 misdemeanor under G.S. 14-72(a) – the same classification as the proposed offense. Therefore, the new offense does not create any new criminal liability or impact.

There were 16,666 Class 1 misdemeanor convictions under G.S. 14-72(a) for larceny and 94 Class 1 misdemeanor convictions under G.S. 14-72(a) for aiding and abetting larceny during FY 2009/10.

Subsection (2) makes it a Class H felony to take and carry away, or aid in taking and carrying away, any waste kitchen grease within a container bearing the name of the owner and a notice that unauthorized removal is prohibited without the owner's written consent, if the value of the container (or the container and the grease) is more than \$1,000.

Larceny (and aiding in larceny) of any property with a value of more than \$1,000 is already a Class H felony under G.S. 14-72(a) – the same classification as the proposed offense. Therefore, the new offense does not create any new criminal liability or impact.

There were 985 Class H felony convictions under G.S. 14-72(a) for larceny and 15 Class H felony convictions under G.S. 14-72(a) for aiding and abetting larceny during FY 2009/10.

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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.2]

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subpart (a1)(1):

A person who:

1. is a convicted felon and
2. purchases, owns, possesses, or has in his custody, care, or control
3. any
 - a. ammunition or
 - b. electric weapon or device intended to be used as a weapon.

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 a Class G felony for a convicted felon to purchase, own, possess, or have in his custody, care, or control any firearm or weapon of mass death and destruction. G.S. 14-415.1.

In April 2011, the Commission reviewed a similar provision in HB 582 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.2]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subpart (a1)(1):

A person who:

1. is a convicted felon and
2. carries a concealed weapon.

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.

For purposes of the offense, "concealed weapon" includes a tear gas gun or similar device intended to be used as a weapon.

It is a Class G felony for a convicted felon to purchase, own, possess, or have in his custody, care, or control any firearm or weapon of mass death and destruction. G.S. 14-415.1.

Carrying a concealed weapon is a Class 2 misdemeanor. G.S. 14-269(a), (c).

Carrying a concealed pistol or gun is a Class 2 misdemeanor for the first offense, and a Class I felony for a second or subsequent offense. G.S. 14-249(a1), (c).

In April 2011, the Commission reviewed a similar provision in HB 582 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.2]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subpart (a1)(2):

A person who:

1. is a convicted felon and
 - a. purchases, owns, possesses, or has in his custody, care, or control a firearm, weapon of mass death and destruction, ammunition, or electric weapon or device intended to be used as a weapon, or
 - b. carries a concealed weapon
2. and discharges the proscribed weapon.

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.

Discharging a firearm into occupied property is a Class E felony. G.S. 14-34.1(a).

Discharging a firearm into an occupied dwelling or vehicle in operation is a Class D felony. G.S. 14-34.1(b).

In April 2011, the Commission reviewed a similar provision in HB 582 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class E felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.2]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a1)(3):

A person who:

1. is a convicted felon and
 - a. purchases, owns, possesses, or has in his custody, care, or control any firearm, weapon of mass death and destruction, ammunition, or electric weapon or device intended to be used as a weapon, or
 - b. carries a concealed weapon
2. resulting in serious injury to a person.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

“Serious injury” under G.S. 14-415.1 refers to “a lesser degree of physical harm than serious bodily injury, which includes but is not limited to bruises, lacerations, sprains, broken bones, or any other indications of physical injury of a type which do[es] not constitute serious bodily injury.”

Assault with a deadly weapon inflicting serious injury is a Class E felony. G.S. 14-32.

In April 2011, the Commission reviewed a similar provision in HB 582 [Ed.1] and found it inconsistent with the Offense Classification Criteria for a Class D felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 582 – Amend Felony Firearms Act/Increase Penalties [Ed.2]
(cont'd)

STATUTE

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

DESCRIPTION

Subsection (a1)(4):

A person who:

1. is a convicted felon and
 - a. purchases, owns, possesses, or has in his custody, care, or control any firearm, weapon of mass death and destruction, ammunition, or electric weapon or device intended to be used as a weapon,
 - b. or carries a concealed weapon
2. resulting in serious bodily injury to a person.

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.

“Serious bodily injury” under G.S. 14-415.1 “has the same definition as the term is defined in G.S. 14-32.4(a)[.]”

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

In April 2011, the Commission reviewed a similar provision in HB 582 [Ed.1] and found it consistent with the Offense Classification Criteria for a Class C felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 582: AMEND FELONY FIREARMS ACT/INCREASE PENALTIES

PREPARED: MAY 19, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends G.S. 14-415.1, Possession of firearms, etc, by felon prohibited, by broadening the scope of the existing offense and creating several new offenses within the section. Existing G.S. 14-415.1(a) provides that it shall be a Class G felony for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or weapon of mass death and destruction.

G.S. 14-415.1(a) is amended by adding to the list of items that a convicted felon shall not purchase, own, possess or have in his custody, care or control, any ammunition or any electric weapon or electric device intended to be used as a weapon, thereby expanding the scope of the existing Class G felony. The scope of the Class G felony is further expanded by the amendment to G.S. 14-415.1(a) that provides that it is also unlawful for any person who has been convicted of a felony to carry a concealed weapon, including a tear gas gun or a chemical weapon or chemical device intended to be used as a weapon. G.S. 14-415.1(a1)(1) provides that unless the conduct is covered under some other provision of law providing greater punishment, a violation of G.S. 14-415.1(a) is a Class G felony.

There were 1,145 convictions under G.S. 14-415.1(a) for possession of a firearm by a felon during FY 2009/10. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2009/10, 42% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. If, for example, there were two additional Class G convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

This bill creates a new offense and could reclassify some offenders who are currently convicted under several existing offenses through the addition of G.S. 14-415.1(a1)(2). G.S. 14-415.1(a1)(2) creates a new Class E felony, providing that unless the conduct is covered under some other provision of law providing greater punishment, a person who violates G.S. 14-415.1(a) and discharges the firearm, electronic weapon or device or any other weapon described in G.S. 14-415.1(a) is guilty of a Class E felony.

1. This bill reclassifies some offenders who may currently be charged with a Class G felony under G.S. 14-415.1(a), as Class E felons under G.S. 14-145.1(a1)(2).

It is unknown how many of the 1,145 convictions for possession of a firearm by a felon would meet the requirements for a Class E felony under the proposed statute. Impact on the prison population will occur if Class G convictions become Class E convictions under the proposed statute because of the higher rate of active sentences (51% for Class E compared to 42% for Class G) and longer average estimated time served (27 months compared to 15 months for Class G). If, for example, there were two Class G felony convictions that were reclassified as Class E felony convictions, this would result in the need for no additional prison beds the first year and

one additional prison bed the second year. No additional prison beds would be needed in year one because average estimated time served for both Class G and Class E felonies is greater than 12 months. However, impact could occur in year one, depending on the number of convictions that would be reclassified, due to the difference in active rates. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

2. This bill also creates a new Class E felony for some offenders who discharge a firearm. Offenders who are convicted felons and may currently be charged under G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property, or under G.S. 14-34.9, Discharging a firearm from within an enclosure, could be charged under G.S. 14-415.1(a2). G.S. 14-34.1(a) provides that it shall be a Class E felony for any person to willfully and wantonly discharge or attempt to discharge any firearm or barreled weapon into any building, structure, vehicle, or enclosure while it is occupied. G.S. 14-34.9 provides that it shall be a Class E felony for any person to willfully or wantonly discharge or attempt to discharge a firearm, as part of a pattern of criminal street gang activity, from within any building, structure, motor vehicle, or other conveyance, erection or enclosure toward a person(s) not within that enclosure. Since the current offenses and the new offense are Class E felonies, it would not change the classification of the offense of conviction.

In FY 2009/10, there were 83 convictions for discharging a weapon into occupied property and no convictions for discharging a firearm from within an enclosure. It is unknown how many of these offenses were committed by convicted felons. Charging convicted felons under the proposed section would have no effect on the prison population because it does not change the offense class.

3. Finally, a new Class E felony is created by G.S. 14-415.1(a1)(2). Some offenders may be charged with a Class E felony for the new offense of discharging an electric weapon or device, a tear gas gun, or a chemical weapon or device.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. In FY 2009/10, 51% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. If, for example, there were two Class E convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

The bill creates a new offense and could reclassify some offenders who are currently convicted under two existing offenses through the addition of G.S. 14-415.1(a1)(3), which provides that a person who violates G.S. 14-415.1(a) is guilty of a Class D felony if the violation results in serious injury to a person.

1. This bill reclassifies some offenders who may currently be charged with a Class G felony under G.S. 14-415.1(a), as Class D felons under G.S. 14-415.1(a1)(3).

It is unknown how many of the 1,145 convictions for possession of a firearm by a felon would meet the requirements for a Class D felony under the proposed statute. Impact on the prison population will occur if Class G convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 42% for Class G) and longer average estimated time served (63 months compared to 15 months for Class G). If, for example, there were two Class G felony convictions that were reclassified as Class D felony convictions, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

2. Some offenders guilty of the conduct prohibited in G.S. 14-415.1(a1)(3), may currently be punished under G.S. 14-32(b). G.S. 14-32(b) provides that it shall be a Class E felony for any person to assault another with a deadly weapon and inflict a serious injury in so doing; this bill would reclassify those offenders who inflict serious injury to a person as a result of violating the provisions of G.S. 14-415(a) as Class D felons.

There were 432 convictions for assault with a deadly weapon inflicting serious injury in FY 2009/10. It is unknown how many of these convictions were for offenses committed by convicted felons and would be reclassified from Class E to Class D under the proposed bill. Impact on the prison population will occur if Class E convictions become Class D convictions under the proposed statute because of the higher rate of active sentences (100% for Class D compared to 51% for Class E) and longer average estimated time served (63 months compared to 27 months for Class E). If, for example, there were two Class E felony convictions that were reclassified as Class D felony convictions, this would result in the need for one additional prison bed the first year and one additional prison bed the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

3. Finally, a new Class D felony is created by G.S. 14-145(a1)(3). Some offenders may be charged with a Class D felony for the new offense of inflicting serious injury to a person as a result of carrying ammunition, an electric weapon or device, a tear gas gun, or a chemical weapon or device.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class D offense was 63 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

Finally, G.S. 14-415.1(a1)(4) creates a new Class C felony and could reclassify some offenders who are currently convicted under an existing offense. G.S. 14-415.1(a1)(4) provides that a person who violates G.S. 14-415.1(a) is guilty of a Class C felony if the violation results in serious bodily injury to a person.

1. This bill reclassifies some offenders who may currently be charged with a Class G felony under G.S. 14-415.1(a), as Class C felons under G.S. 14-415.1(a1)(4).

It is unknown how many of the 1,145 convictions for possession of a firearm by a felon would meet the requirements for a Class C felony under the proposed statute. Impact on the prison population will occur if Class G convictions become Class C convictions under the proposed statute because of the higher rate of active sentences (100% for Class C compared to 42% for Class G) and longer average estimated time served (82 months compared to 15 months for Class G). If, for example, there were two Class G felony convictions that were reclassified as Class C felony convictions, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

2. Some offenders guilty of the conduct prohibited in G.S. 14-415.1(a1)(4), may currently be punished under G.S. 14-32.4(a). G.S. 14-32.4(a) provides that it shall be a Class F felony for any person to assault another and inflict serious bodily injury in so doing; this bill would reclassify those offenders who inflict serious bodily injury to a person as a result of violating the provisions of G.S. 14-415(a) as Class C felons.

There were 214 Class F felony convictions for assault with a deadly weapon inflicting serious injury under G.S. 14-32.4 in FY 2009/10. It is unknown how many of these convictions were for offenses committed by convicted felons and would be reclassified from Class F to Class C under the proposed bill. Impact on the prison population will occur if Class F convictions become Class C convictions under the proposed statute because of the higher rate of active sentences (100% for Class C compared to 54.3% for Class F) and longer average estimated time served (82 months for Class C compared to 18 months for Class F). If, for example, there were two Class F felony convictions that were reclassified as Class C felony convictions, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

3. Also, a new Class C felony is created by G.S. 14-415.1(a1)(4) inflicting serious bodily injury as a result of carrying ammunition, an electric weapon or device, a tear gas gun, or a chemical weapon or device.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2009/10 the average estimated time served for an offender convicted of a Class C offense was 82 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations.

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 591 – LDP/Ignition Interlock Changes [Ed.2]

STATUTE

§ 20-17.8A. Tampering with ignition interlock systems.

DESCRIPTION

A person who

1. tampers with, circumvents, or attempts to circumvent
2. an ignition interlock device
 - a. installed on a motor vehicle and
 - b. required as a condition for the individual's operation thereof
3. for the purpose of
 - a. avoiding or altering a test on the device in operating or attempting to operate the vehicle, or
 - b. altering test results received, or in the process of being received, on the device.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Each act of tampering, circumvention, or attempted circumvention is a separate offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Tampering with an electronic monitoring device used for a sentence of house arrest is a felony or misdemeanor one class lower than the most serious underlying conviction. G.S. 14-226.3.

Tampering with an electronic monitoring device used as a condition of bond or pretrial release is a Class 1 misdemeanor. G.S. 14-226.3.

Tampering with a satellite based sex-offender monitoring device is a Class E felony. G.S. 14-208.44(b).

See also HB 761.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

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 642 – Justice Reinvestment Act [Ed.3]

STATUTE

§ 15A-1340.11. Definitions.

DESCRIPTION

Subsection (2):

A person sentenced to a community punishment.

PUNISHMENT RANGE

CURRENT: A sentence that does not include active incarceration, an intermediate punishment, or any of the following conditions of probation: special probation (*i.e.*, split sentence), assignment to a residential program, day reporting center or drug treatment court program, house arrest with electronic monitoring, or intensive supervision.

PROPOSED: A sentence that does not include active incarceration or assignment to a drug treatment court program but may include house arrest with electronic monitoring, special probation (*i.e.*, split sentence), community service, substance abuse assessment, monitoring or treatment, participation in an educational or vocational skills development program, satellite-based monitoring (for qualifying sex offenders), or submission to up to six days per month of confinement in a local confinement facility.

ANALYSIS

The bill changes the definitions of “community punishment” and “intermediate punishment” under Structured Sentencing. Other than assignment to a drug treatment court, the authorized conditions of probation are the same for community and intermediate punishments.

On April 8, 2011, the Commission reviewed an identical provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE REVIEWED: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1340.11. Definitions.

DESCRIPTION

Subsection (6):

A person sentenced to an intermediate punishment:

PUNISHMENT RANGE

CURRENT: Supervised probation with at least one of the following conditions: special probation (*i.e.*, split sentence), assignment to a residential program, day reporting center or drug treatment court program, house arrest with electronic monitoring, or intensive supervision.

PROPOSED: Supervised probation. The court may also impose drug treatment court and/or one or more of the following: house arrest with electronic monitoring, special probation (*i.e.*, split sentence), community service, substance abuse assessment, monitoring or treatment, participation in an educational or vocational skills development program, satellite-based monitoring (for qualifying sex offenders), or submission to up to six days per month of confinement in a local confinement facility.

ANALYSIS

The bill changes the definitions of “community punishment” and “intermediate punishment” under Structured Sentencing. Other than assignment to a drug treatment court, the authorized conditions of probation are the same for community and intermediate punishments.

On April 8, 2011, the Commission reviewed an identical provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable.

FINDINGS

- Bill is **consistent** with G.S. 164-41.
- Bill is **inconsistent** with G.S. 164-41.
- G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE REVIEWED: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1344. Response to violations; alteration and revocation.

DESCRIPTION

Subsections (a), (d2):

A person who violates any condition of probation other than the following:

1. Commit no criminal offense in any jurisdiction, G.S. 15A-1343(b)(1), or
2. Not to abscond, by willfully avoiding supervision or by willfully making the defendant's whereabouts unknown to the supervising probation officer, G.S. 15A-1343(b)(3a).

PUNISHMENT RANGE

CURRENT: Continue, extend, or modify the conditions of probation, impose special probation (*i.e.*, split sentence), or revoke probation and activate the suspended sentence. (G.S. 15A-1344(d)).

PROPOSED: Continue, extend, or modify the conditions of probation, impose special probation (*i.e.*, split sentence), or impose a 90-day period of confinement pursuant to G.S. 15A-1344(d2). The court may not revoke probation unless the defendant has previously received two 90-day periods of confinement; and the defendant may not receive more than two 90-day periods of confinement under this subsection.

ANALYSIS

If the time remaining on the defendant's maximum imposed sentence is less than 90 days, the term of confinement shall be the remaining period of the sentence. G.S. 15A-1344(d2).

Confinement shall be credited against the defendant's sentence pursuant to G.S. 15-196.1.

On April 8, 2011, the Commission reviewed a similar provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE REVIEWED: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1368.2. Post-release supervision eligibility and procedure.

DESCRIPTION

A person sentenced an active punishment for a Class B1 through E felony:

PUNISHMENT RANGE

CURRENT: Release onto 9 months of post-release supervision on the date equivalent to the maximum prison term less 9 months (less any earned time credits awarded).

PROPOSED: Release onto 12 months of post-release supervision on the date equivalent to the maximum prison term less 12 months (less any earned time credits awarded).

ANALYSIS

The maximum sentence for Class B1 through E felonies currently includes 9 months for post-release supervision. The bill increases the maximum sentence for Class B1 through E felonies by 3 months. G.S. 15A-1340.17(e).

The bill maintains the 5-year period of post-release supervision for convictions resulting in registration as a sex offender under G.S. Chapter 14, Article 27A (Sex Offender Registration Programs).

On April 8, 2011, the Commission reviewed an identical provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE REVIEWED: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1368.2. Post-release supervision eligibility and procedure.

DESCRIPTION

A person sentenced to an active punishment for a Class F through I felony:

PUNISHMENT RANGE

CURRENT: Release without post-release supervision on the date equivalent to the maximum prison term less any earned time credits awarded pursuant to G.S. 15A-1340.13(d).

PROPOSED: Release onto 9 months of post-release supervision on the date equivalent to the maximum prison term (less any earned time credits awarded) less 9 months.

ANALYSIS

The bill increases the maximum sentence for Class F through I felonies by 9 months. G.S. 15A-1340.17(e).

The bill imposes a 5-year period of post-release supervision for Class F through I felony convictions requiring registration under G.S. Chapter 14, Article 27A (Sex Offender Registration Programs).

On April 8, 2011, the Commission reviewed an identical provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1368.3 Incidents of post-release supervision.

DESCRIPTION

Subsections (c):

A person who

1. is convicted of an offense that does not require registration as a sex offender, and
2. violates the conditions of post-release supervision other than by
 - a. committing a new crime, or
 - b. absconding.

PUNISHMENT RANGE

CURRENT: Continuation on supervision with or without modified conditions, or revocation and re-imprisonment for a period up to the time remaining on the maximum imposed sentence.

PROPOSED: Continuation on supervision with or without modified conditions, or re-imprisonment for three months. A supervisee may be returned to prison for three months on each of two subsequent violations, after which supervisees who were Class B1 through E felons may be returned to prison up to the time remaining on their maximum imposed sentences.

ANALYSIS

The prisoner is eligible to receive earned time credit against the maximum imposed sentence as provided in G.S. 15A-1340.13(d) for time served in prison after the revocation.

On April 8, 2011, the Commission reviewed an identical provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

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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 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 14-7.26. Habitual breaking and entering status offender.

DESCRIPTION

A person who

1. commits a “breaking and entering” offense
2. having at least one prior conviction for a felony breaking and entering offense in any U.S. state or federal court.

PROPOSED OFFENSE CLASS

Class E felony. (G.S. 14-7.31).

ANALYSIS

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

The term “breaking and entering” includes the felonies of first and second degree burglary (G.S. 14-51), breaking out of a dwelling house (G.S. 14-53), breaking or entering buildings generally (G.S. 14-54(a)), breaking or entering a place of religious worship (G.S. 14-54.1), any substantially equivalent offense.

The second felony breaking and entering offense must have been committed after the defendant’s conviction of the first offense. G.S. 14-7.26. Offenses committed before the person is 18 years of age shall not constitute more than one felony of breaking and entering offense under this Article.

On April 8, 2011, the Commission reviewed a similar provision in HB 642 [Ed.1] and found that it was inconsistent with the Offense Classification Criteria for a Class E felony, but would be consistent with Class C or Class F.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or Class F felony.

DATE REVIEWED: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 14-7.6. Sentencing of habitual felons.

DESCRIPTION

A person convicted of a felony offense as an habitual felon.

PUNISHMENT RANGE

CURRENT: Sentenced as a Class C felon.

PROPOSED: Sentenced four classes higher than the principal felony, but no higher than Class C.

ANALYSIS

In 2002 the Sentencing Commission proposed that a felony committed as an habitual felon be punished three classes higher than its offense classification, but in no case higher than Class C.

On April 8, 2011, the Commission reviewed a similar provision in HB 642 [Ed.1], under which the court would have discretion to impose a sentence one to four classes higher than the principal felony – but no higher than Class C. The Commission found this provision to be inconsistent with G.S. 164-41.

FINDINGS

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

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

G.S. 164-41 is not applicable.

DATE REVIEWED: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1340.18. Advanced Supervised Release.

DESCRIPTION

A person who

1. receives a non-mitigated active sentence from the following cells of the felony punishment chart:
 - a. Class D felony, Prior Record Level I-III;
 - b. Class E felony, Prior Record Level I-IV;
 - c. Class F felony, Prior Record Level I-V; or
 - d. Class G or H felony, any Prior Record Level
2. and completes a court-ordered risk reduction incentive.

PUNISHMENT RANGE

CURRENT: Release after serving the maximum term imposed by the court, less any earned time credits awarded by the Department of Correction (DOC) down to, but not below, the minimum term.

PROPOSED: Release on Advanced Supervised Release (ASR) after serving the shortest minimum term authorized in the mitigated range for the offense class and prior record level.

ANALYSIS

Absent objection by the prosecutor, the court has the discretion to include one or more risk reduction incentives in the defendant's sentence. Risk reduction incentives are treatment, education, and rehabilitative programs designed by DOC to reduce the defendant's likelihood of reoffending.

At sentencing, the defendant shall be notified that if the defendant completes the risk reduction incentives, he or she will be released on the ASR date. If DOC determines that the defendant is unable to complete the incentives through no fault of the defendant, it shall release the defendant at the ASR date. A defendant who fails to complete the risk reduction incentives, or who violates DOC rules or regulations after completion but prior to the ASR date, shall be released based on the original sentence. A defendant released on ASR is subject to post-release supervision (PRS). If the defendant has been returned to prison for three three-month periods of confinement for violating PRS, a subsequent violation will result in the defendant serving the remainder of the maximum sentence.

On April 8, 2011, the Commission reviewed a similar provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable. A finding that the structure is not applicable does not imply support for, or opposition to, the bill.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE REVIEWED: 06/03/11

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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 642 – Justice Reinvestment Act [Ed.3] (cont'd)

STATUTE

§ 15A-1340.18. Advanced Supervised Release.

DESCRIPTION

A person who

1. receives a mitigated active sentence from the following cells of the felony punishment chart:
 - a. Class D felony, Prior Record Level I-III;
 - b. Class E felony, Prior Record Level I-IV;
 - c. Class F felony, Prior Record Level I-V; or
 - d. Class G or H felony, any Prior Record Level
2. and completes a court-ordered risk reduction incentive.

PUNISHMENT RANGE

CURRENT: Release after serving the maximum term imposed by the court, less any earned time credits awarded by the Department of Correction (DOC) down to, but not below, the minimum term.

PROPOSED: Release on Advanced Supervised Release (ASR) after serving 80% of the minimum sentence imposed by the court.

ANALYSIS

Absent objection by the prosecutor, the court has the discretion to include one or more risk reduction incentives in the defendant's sentence. Risk reduction incentives are treatment, education, and rehabilitative programs designed by DOC to reduce the defendant's likelihood of reoffending.

At sentencing, the defendant shall be notified that if the defendant completes the risk reduction incentives, he or she will be released on the ASR date. If DOC determines that the defendant is unable to complete the incentives through not fault of the defendant, it shall release the defendant at the ASR date. A defendant who fails to complete the risk reduction incentives, or who violates DOC rules or regulations after completion but prior to the ASR date, shall be released based on the original sentence. A defendant released on ASR is subject to post-release supervision (PRS). If the defendant has been returned to prison for three three-month periods of confinement for violating PRS, a subsequent violation will result in the defendant serving the remainder of the maximum sentence.

On April 8, 2011, the Commission reviewed a similar provision in HB 642 [Ed.1] and found G.S. 164-41 to be inapplicable. A finding that the structure is not applicable does not imply support for, or opposition to, the bill.

FINDINGS

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

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

G.S. 164-41 is not applicable.

House Bill 642 changes some of the aspects of structured sentencing and, therefore, it is not possible to apply the current structure to determine consistency. A finding that the structure is not applicable does not imply either support for or opposition to the bill itself.

DATE REVIEWED: 06/03/11

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 674 – Amend Habitual Felon Law [Ed.1]

STATUTE

§ 14-7.1. Persons defined as habitual felons.

DESCRIPTION

A person who

1. commits a felony of Class G or higher
2. after being convicted of 3 prior felony offenses
 - a. of Class G or higher, or the equivalent thereof, and
 - b. committed within 15 years of the date of the principal felony.

OFFENSE CLASS

CURRENT: Class C felony (G.S. 14-7.6).

PROPOSED: One class higher than the principal felony, except where the person has been sentenced as a Class A, B1, or B2 felon (G.S. 14-7.6).

ANALYSIS

Currently, any class of felony may qualify as the principal felony or any of the three prior felony convictions used to establish a person’s habitual felon status. G.S. 14-7.1.

Currently, there is no 15-year time limit on the use of prior felony convictions to establish habitual felon status. G.S. 14-7.1.

Structured Sentencing takes account of a felon’s prior convictions through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 674 – Amend Habitual Felon Law [Ed.1] (cont'd)

STATUTE

§ 15A-1340.16E. Enhanced sentence if defendant has at least three prior convictions of Class H or I felonies.

DESCRIPTION

A person who

1. commits a Class H or I felony
2. after being convicted of 3 prior felony offenses
 - a. of Class H or I, or the equivalent thereof, and
 - b. committed within 10 years of the principal felony.

OFFENSE CLASS

CURRENT: Sentenced as a Class C felon. (G.S. 14-7.6).

PROPOSED: Sentenced to a minimum term of 20 months of active punishment and a maximum term of 25 months. Upon completion of the active sentence, the person shall be released onto post-release supervision for a period of 12 months (notwithstanding G.S. 15A-1368.2).

ANALYSIS

Currently, any class of felony may qualify as the principal felony or any of the three prior felony convictions used to establish a person's habitual felon status. G.S. 14-7.1.

Currently, there is no 10-year time limit on the use of prior felony convictions to establish habitual felon status. G.S. 14-7.1.

A sentence of 20 to 25 months is not authorized under Structured Sentencing. G.S. 15A-1340.17(c)-(e).

Structured Sentencing takes account of a felon's prior convictions through the Prior Record Level.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 690 – Supervise RE Closings/Settlement Funds [Ed.3]

STATUTE

§ 84-8. Punishment for violations.

DESCRIPTION

A person, corporation, or association of persons that

1. without a license to practice law,
2. appears for another
 - a. in any bankruptcy or insolvency proceeding,
 - b. in any action or proceeding involving the appointment of a receiver,
 - c. in any matter involving an assignment for the benefit of creditors, or
 - d. to present or vote any claim of another
3. in violation of G.S. 84-9.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to property, or serious injury to society as Class 1 misdemeanors.

It is currently a Class 1 misdemeanor for a person, corporation, or association of persons to violate any of the following statutes governing the unlicensed practice of law:

G.S. 84-4. Persons other than members of State Bar prohibited from practicing law.

G.S. 84-4.1. Limited practice of out-of-state attorneys.

G.S. 84-4.2. Summary revocation of permission granted out-of-state attorneys to practice.

G.S. 84-5. Prohibition as to practice of law by corporation.

G.S. 84-5.1. Rendering of legal services by certain nonprofit corporations.

G.S. 84-6. Exacting fee for conducting foreclosures prohibited to all except licensed attorneys.

G.S. 84-8.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 690: SUPERVISE RE CLOSINGS/SETTLEMENTS FUNDS

PREPARED: APRIL 14, 2011

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

The bill amends G.S. 84-8, Punishment for violations. In new subsection (a), the bill reclassifies the punishment for engaging in the unlicensed practice of law in violation of G.S. 84-4 through G.S. 84-6 from a Class 1 misdemeanor to a Class I felony, except as provided in new subsection (b), which retains the current Class 1 misdemeanor classification for violations that are due solely to person's law license being inactive for failure to timely pay annual State Bar dues or to comply with continuing legal education requirements. The bill also renders the offense in G.S. 84-8 inapplicable to violations of G.S. 84-7, District attorneys, upon application, to bring injunction or criminal proceedings.¹

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 84-8. Therefore, the number of convictions under G.S. 84-8 in FY 2009/10 is unknown. The lack of an AOC offense code indicates that this offense is infrequently charged and/or infrequently results in convictions.

It is not known (1) how many current Class 1 misdemeanor convictions would be eliminated through the bill's decriminalization of G.S. 84-7 violations, or (2) how many Class 1 misdemeanor convictions would be reclassified as Class I felonies under the bill's amendments to G.S. 84-8. The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009/10, 17% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. Using threshold data, if, for example, 10 convictions were reclassified from Class 1 to Class I, this would result in the need for one additional prison bed the first year and three additional prison beds the second year.

¹ Section 84-7 imposes a duty on district attorneys "to indict any person, corporation, or association of persons upon the receipt of information of the violation of the provisions of G.S. 84-4 to 84-8."

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 696 – Assault on Officer/Serious Injury/Penalty [Ed.2]

STATUTE

§ 14-34.7. Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility.

DESCRIPTION

Subsection (c):

A person who

1. assaults and
2. inflicts “physical injury” upon
 - a. a law enforcement, probation, or parole officer , or
 - b. a person employed at a State or local detention facility
3. while the officer or employee is discharging or attempting to discharge official duties.

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.

“Physical injury” is defined to “include[e] cuts, scrapes, bruises, or other physical injury which does not constitute serious injury.” G.S. 14-34.7(c).

Assault inflicting serious injury on a law enforcement, probation, or parole officer, or on an employee of a state or local detention facility, who is discharging or attempting to discharge official duties is a Class F felony. G.S. 14-34.7(a)-(b); *State v. Crawford*, 167 N.C. App. 777, 606 S.E.2d 375 (2005).

Assault of a public officer or employee who is discharging or attempting to discharge official duties is a Class A1 misdemeanor. G.S. 14-33(c)(4).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 696: ASSAULT/OFFICER/PHYSICAL INJURY

PREPARED: MAY 25, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

The bill enacts two new Class I felonies by adding subparts (c)(1) and (c)(2) to G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility.

(1) G.S. 14-34.7(c)(1): Subpart (c)(1) makes it a Class I felony to assault and inflict “physical injury” upon a law enforcement, probation, or parole officer (collectively “LEO”) while the LEO is discharging or attempting to discharge official duties. The new offense is a lesser included offense the Class F felony of assault of an LEO inflicting “serious bodily injury” in G.S. 14-34.7(a).¹ A “serious injury” has been held sufficient to support the Class F felony in (a), notwithstanding the statute’s use of the term “serious bodily injury.” *State v. Crawford*, 167 N.C. App. 777, 606 S.E.2d 375 (2005). The new Class I felony in (c)(1) requires only a “physical injury which does not rise to the level of serious injury.” G.S. 14-37.4(c).²

The proposed offense would draw from the existing Class A1 misdemeanor offenses of (1) assault on a state or local public officer or employee discharging or attempting to discharge official duties, G.S. 14-33(c)(4), and (2) assault on a company or campus police officer in the performance of official duties G.S. 14-33(c)(8). (It is assumed that an assault on an LEO inflicting an injury that the prosecutor deem insufficiently “serious” to support a charge under G.S. 14-34.7(a) is currently charged as one of these offenses, rather than as a Class 2 misdemeanor simple assault under G.S. 14-33(a)).

In FY 2009/10, there were 1,455 Class A1 misdemeanor convictions under G.S. 14-33(c)(4) and 15 convictions under 14-33(c)(8). Although it is not possible to determine the portion that would be reclassified to Class I, some portion of these 1,470 convictions would likely be reclassified, given the similarities in the elements of the offenses. In FY 2009/10, 17.4% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. At the request of the Fiscal Research Division, the following scenarios were prepared to illustrate further the potential impact of this proposed bill:

¹ In FY 2009/10, there were 12 Class F convictions under G.S. 14.34.7. It is not possible to distinguish between convictions resulting from violations of G.S. 14.34.7(a) and convictions resulting from violations of 14.34.7(b).

² Note: Under current case law, “as long as the State presents evidence that the victim sustained a physical injury as a result of an assault by the defendant, it is for the jury to determine the question of whether the injury was serious.” *State v. Walker*, __ N.C. App. __, __, 694 S.E.2d 484, 495 (2010) (quotations omitted). Therefore, there is no legal standard for identifying a “physical injury that does not constitute serious injury” other than the jury’s verdict. G.S. 14-34.7(c).

If it is assumed that 147 offenders (or 10% of the 1,470 convictions described above) would be convicted as Class I felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 14 prison beds the first year and 47 prison beds the second year.

If it is assumed that 735 offenders (or 50% of the 1,470 convictions described above) would be convicted as Class I felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 71 prison beds the first year and 237 prison beds the second year.

(2) G.S. 14-34.7(c)(2): Subpart (c)(1) makes it a Class I felony to assault and inflict “physical injury” upon a person employed at a State or local detention facility who is discharging or attempting to discharge official duties. The new offense is a lesser included offense of the Class F felony of assault inflicting serious bodily injury on a detention facility employee in G.S. 14-34.7(b).³ A “serious injury” has been held sufficient to support the Class F felony in (b), notwithstanding the statute’s use of the term “serious bodily injury.” State v. Crawford, 167 N.C. App. 777, 606 S.E.2d 375 (2005). The new Class I felony in (c)(2) requires only a “physical injury which does not rise to the level of serious injury.” G.S. 14-37.4(c).⁴

The proposed offense would primarily draw from the existing Class A1 misdemeanor offense of assault on a state or local public officer or employee discharging or attempting to discharge official duties, G.S. 14-33(c)(4). (It is assumed that an assault on a detention facility employee inflicting an injury that the prosecutor deems insufficiently “serious” to support a charge under G.S. 14-34.7(b) is currently charged as one of these offenses, rather than as a Class 2 misdemeanor simple assault under G.S. 14-33(a)).

In FY 2009/10, there were 1,455 Class A1 misdemeanor convictions under G.S. 14-33(c)(4). In FY 2009/10, 17.4% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were ten Class I convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year. At the request of the Fiscal Research Division, the following scenarios were prepared to illustrate further the potential impact of this proposed bill:

If it is assumed that 146 offenders (or about 10% of the 1,455 convictions described above) would be convicted as Class I felons under the proposed statute, the combination of active sentences and probation revocations would result in the need for 14 prison beds the first year and 47 prison beds the second year.

If it is assumed that 728 offenders (or about 50% of the 1,455 convictions described above) would be convicted as Class I felons under the proposed statute, the combination of active

³ In FY 2009/10, there were 12 Class F convictions under G.S. 14.34.7. It is not possible to distinguish between convictions resulting from violations of G.S. 14.34.7(a) and convictions resulting from violations of 14.34.7(b).

⁴ Note: Under current case law, “as long as the State presents evidence that the victim sustained a physical injury as a result of an assault by the defendant, it is for the jury to determine the question of whether the injury was serious.” State v. Walker, ___ N.C. App. ___, ___, 694 S.E.2d 484, 495 (2010) (quotations omitted). Therefore, there is no legal standard for identifying a “physical injury that does not constitute serious injury” other than the jury’s verdict. G.S. 14-34.7(c).

sentences and probation revocations would result in the need for 71 prison beds the first year and 235 prison beds the second year.

While less likely, the proposed offense might also draw from the Class A1 misdemeanor of assault on a company or campus police officer in the performance of official duties G.S. 14-33(c)(8). There were 15 convictions under G.S. 14-33(c)(8) in FY 2009/10. However, it is not known how many current convictions for this offense would qualify for the new Class I felony. In FY 2009/10, 17.4% of Class I felony convictions resulted in active sentences, with an average estimated time served of seven months. If, for example, there were ten Class I felony convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed for the first year and three additional prison beds for the second year.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 729 – Reckless Assault of a Child [Ed.1]

STATUTE

§ 14-32.5. Reckless assault of a child.

DESCRIPTION

A person who

1. is at least 18 years of age and
2. recklessly causes
3. serious bodily injury
4. to the brain of a child under 5 years of age
 - a. by shaking the child, or
 - b. by slamming or throwing the child and impacting the child's head on a hard surface or object.

PROPOSED OFFENSE CLASS

Class D felony.

ANALYSIS

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies.

Assault inflicting serious bodily injury is a Class F felony. G.S. 14-318.4(a).

Felony child abuse inflicting serious bodily injury is a Class C felony. G.S. 14-318.4(a3).

G.S. 14-32.5 defines “serious bodily injury” as (1) serious bodily injury as defined in G.S. 14-318.4, or (2) extreme rotational cranial acceleration and deceleration plus subdural hemorrhaging, intracranial hemorrhaging, and/or retinal hemorrhaging.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class C or Class E felony.

DATE OF REVIEW: 06/03/11

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 753 – Establish Radiologic Technicians Licensure [Ed.1]

STATUTE

§ 90-750. Violation a misdemeanor.

DESCRIPTION

A person who

1. violates
2. any provision of the North Carolina Consistency, Accuracy, Responsibility and Excellence (CARE) in Medical Imaging and Radiation Therapy Act.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Each act of such unlawful practice shall constitute a distinct and separate offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person or serious injury to society as Class 1 misdemeanors.

The Act provides that, on or after October 1, 2012, no person shall administer or offer to administer medical imaging or radiation therapy procedures on humans for diagnostic or therapeutic purposes or otherwise indicate or imply that the person is licensed to administer medical imaging or radiation therapy procedures unless that person is currently licensed as provided under Chapter 90, Article 43 (Radiologic Technicians). G.S. 90-738.

The act authorizes a licensed radiologic technician to use radioactive substances or equipment emitting ionizing or non-ionizing radiation for medical imaging and radiation therapy procedures on humans for diagnostic or therapeutic purposes only by prescription of a licensed practitioner. G.S. 90-739(b).

It is a Class 1 misdemeanor to violate any provision of the Dental Hygiene Act. G.S. 90-233.1.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 761 – Ignition Interlock Systems/Record Checks [Ed.1]

STATUTE

§ 20-17.8A. Tampering with ignition interlock systems.

DESCRIPTION

A person who

1. tampers with, circumvents, or attempts to circumvent
2. an ignition interlock device
 - a. installed on a vehicle and
 - b. required as a condition the individual’s operation thereof
3. for the purpose of
 - a. avoiding or altering a test on the device in operating or attempting to operate the vehicle, or
 - b. altering test results received, or in the process of being received, on the device.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Each act of tampering, circumvention, or attempted circumvention is a separate offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Tampering with an electronic monitoring device used for a sentence of house arrest is a felony or misdemeanor one class lower than the most serious underlying conviction. G.S. 14-226.3.

Tampering with an electronic monitoring device used as a condition of bond or pretrial release is a Class 1 misdemeanor. G.S. 14-226.3.

Tampering with a satellite based sex-offender monitoring device is a Class E felony. G.S. 14-208.44(b).

See also HB 591.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 776 – Selling Motor Vehicle Registrations Unlawful [Ed.1]

STATUTE

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

DESCRIPTION

Subsection (d):

A person who

1. is a dealer duly registered under G.S. Chapter 20, Article 3 (Motor Vehicle Act of 1937), and
2. sells
3. temporary registration plates or markers
4. to a person other than a bona fide purchaser or owner of a vehicle sold by the dealer.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor. (G.S. 20-176(a), (c)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

It is currently a Class 2 misdemeanor for a dealer to “issue, assign, transfer, or deliver” temporary plates or markers to a person other than a bona fide purchaser or owner of a vehicle sold by the dealer. G.S. 20-79.1(d), 20-176(a), (c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 776 – Selling Motor Vehicle Registrations Unlawful [Ed.1]
(cont'd)

STATUTE

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

DESCRIPTION

Subsection (l):

A person who

1. is not authorized to possess or sell a temporary registration plate, and
2. possesses, sells, transfers, or delivers
3. a temporary registration plate
4. to any other person.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

The Sentencing Commission reviewed an identical provision in HB 471/SB 461 in April 2009, and found it to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 798 – Fraudulent Firearm Purchase Prevention Act. [Ed.1]

STATUTE

§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.

DESCRIPTION

Subsection (b):

A person who

1. knowingly solicits, persuades, encourages, or entices
 - a. a licensed dealer or
 - b. a private seller
2. to transfer
 - a. a firearm or
 - b. ammunition
3. under circumstances that the person knows would violate the laws of this State or the United States.

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.

A person who willfully procures another to engage in the prohibited conduct is accountable as a principal.

This provision does not apply to a law enforcement officer acting in his or her official capacity, or to a person acting at the direction of the law enforcement officer.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 798 – Fraudulent Firearm Purchase Prevention Act. [Ed.1]
(cont'd)

STATUTE

§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.

DESCRIPTION

Subsection (c):

A person who

1. provides
2. information the person knows to be materially false
3. to a licensed dealer or private seller of
 - a. firearms or
 - b. ammunition
4. with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition.

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.

A person who willfully procures another to engage in the prohibited conduct is accountable as a principal.

This provision does not apply to a law enforcement officer acting in his or her official capacity, or to a person acting at the direction of the law enforcement officer.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 843 – Modernize NC Emergency Management Act [Ed.2]

STATUTE

§ 166A-19.30. Additional powers of the Governor during state of emergency.

DESCRIPTION

A person who

1. violates any provision of
 - a. a declaration or
 - b. an executive order
2. issued pursuant to this section.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

HB 843 also codifies this offense in G.S. 14-288.20A.

This provision replaces current G.S. 14-288.15(e), which makes it a Class 2 misdemeanor to violate any provision of a proclamation issued by the Governor during a state of emergency.

FINDINGS

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

DATE OF REVIEW: 06/03/11

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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 843 – Modernize NC Emergency Management Act [Ed.2]
(cont'd)

STATUTE

§ 166A-19.31. Power of municipalities and counties to enact ordinances to deal with states of emergency.

DESCRIPTION

A person who

1. violates any provision of
 - a. an ordinance or
 - b. a declaration
2. enacted or declared pursuant to this section.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

HB 843 also codifies this offense in G.S. 14-288.20A.

This provision replaces current G.S. 14-288.12(e) and G.S. 14-288.13(e), which make it a Class 3 misdemeanor to violate any provision of an ordinance or proclamation enacted or proclaimed by the governing body of a county or municipality during a state of emergency.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 843 – Modernize NC Emergency Management Act [Ed.2]
(cont'd)

STATUTE

§ 14-288.20A. Violation of emergency prohibitions and restrictions.

DESCRIPTION

A person who

1. Violates any provision of an ordinance or a declaration enacted or declared pursuant to G.S. 166A-19.31;
2. Violates any provision of a declaration or executive order issued pursuant to G.S. 166A-19.30; or
3. Willfully refuses to leave the building as directed in a Governor's order issued pursuant to G.S. 166A-19.78.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

Section 166A-19.78 recodifies the Governor's current authority in G.S. 14-288.19 to order the evacuation of a building owned or controlled by any State department, agency, institution, school, board, division, commission, or subdivision, when a public emergency exists or is imminent and, in the Governor's opinion, such evacuation is necessary to maintain public order and safety or to afford adequate protection for lives or property.

This provision replaces current G.S. 14-288.19(b) which makes it a Class 2 misdemeanor to willfully refuse to leave the building as directed in a Governor's evacuation order.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 849 – Third Degree Rape [Ed.1]

STATUTE

§ 14-27.3A. Third degree rape.

DESCRIPTION

Subsection (b):

A person who

1. continues to engage in
2. vaginal intercourse
3. with another person
4. after consent is withdrawn.

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.

A person may withdraw consent to engage in vaginal intercourse during the intercourse, even if any actual penetration is in progress or accomplished with consent and even if there is only one act of vaginal intercourse. The withdrawal of consent must be clearly communicated in a way that a reasonable person would understand to constitute withdrawal of consent. G.S. 14-27.3A(c).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 850 – The Baucum-Reynolds Safe Roads Act [Ed.1]

STATUTE

§ 20-137.4B. Mobile phone use in a crash is an aggravating factor in sentencing.

DESCRIPTION

A person who

1. uses a mobile phone or additional technology, as those terms are defined in G.S. 20-137.3
2. while committing a Class A1 misdemeanor or felony violation of
 - a. G.S. Chapter 20 (Motor Vehicles), or
 - b. any other law
3. resulting in a reportable crash that results in death or serious injury.

PUNISHMENT RANGE

PROPOSED: Punish the offense resulting in the crash at the next highest Prior Conviction Level or Prior Record Level above the level at which the offense would have been punished based on the person’s prior convictions.

The sentence enhancement required by this section shall be in addition to any other penalty required by law or ordered by a court of competent jurisdiction.

ANALYSIS

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: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 850 – The Baucum-Reynolds Safe Roads Act [Ed.2] (cont'd)

STATUTE

§ 20-137.4B. Mobile phone use in a crash is an aggravating factor in sentencing.

DESCRIPTION

A person who

1. uses a mobile phone or additional technology, as those terms are defined in G.S. 20-137.3
2. while committing Class 1, 2, or 3 misdemeanor violation of
 - a. G.S. Chapter 20 (Motor Vehicles), or
 - b. any other law
3. resulting in a reportable crash that results in death or serious injury.

PUNISHMENT RANGE

PROPOSED: Punish the offense resulting in the crash at the next highest level of misdemeanor.

The sentence enhancement required by this section shall be in addition to any other penalty required by law or ordered by a court of competent jurisdiction.

ANALYSIS

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: 06/03/11

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 862 – Election Integrity/Voter Access Act [Ed.1]

STATUTE

§ 163-166.7. Voting procedures.

DESCRIPTION

Subsection (a):

A person who

1. attempts to vote without
 - a. a government issued photo identification or
 - b. an identification document listed in G.S. 163-166.12(b)
2. by completing an affidavit prescribed by the Board of Election
3. falsely signing a statement under penalty of perjury that the voter is the voter whose name appears on the registration roll.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 163-275(4), (13)).

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 knowingly to swear falsely with respect to any matter pertaining to any primary or any general or special election held in North Carolina. G.S. 163-275(4).

It is a Class I felony for any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting. G.S. 163-275(13).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 862 – Election Integrity/Voter Access Act [Ed.1] (cont'd)

STATUTE

§ 163-227.2. Alternate procedures for requesting application for absentee ballot; "one-stop" voting procedure in board office.

DESCRIPTION

Subsection (b):

A person who

1. during "one-stop voting"
2. attempts to vote without
 - a. a government issued photo identification or
 - b. an identification document listed in 31 G.S. 163-166.12(b)
3. by completing an affidavit prescribed by the Board of Election
4. falsely signing a statement under penalty of perjury that the voter is the voter whose name appears on the registration roll.

PROPOSED OFFENSE CLASS

Class I felony (G.S. 163-275(4), (13)).

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 knowingly to swear falsely with respect to any matter pertaining to any primary or any general or special election held in North Carolina. G.S. 163-275(4).

It is a Class I felony for any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting. G.S. 163-275(13).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: HB 889 – Amend Locksmith Licensing Act/Increase Fees [Ed.1]

STATUTE

§ 74F-3. Licenses ~~required~~; use of locksmith tools.

DESCRIPTION

A person who

1. performs or offers to perform
2. locksmith services
3. in North Carolina
4. without a license under G.S. Chapter 74F (Locksmith Licensing Act).

OFFENSE CLASS

CURRENT: Class 3 misdemeanor.

PROPOSED: First offense: Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, property, or society as Class 3 misdemeanors.

“Locksmith services” include repairing, rebuilding, rekeying, repinning, servicing, adjusting, or installing locks, mechanical or electronic locking devices, access or egress control devices, safes, vaults, and safe-deposit boxes for compensation or other consideration, as well as any method of bypassing a locking mechanism of any kind for compensation. G.S. 74F-4(5).

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 889 – Amend Locksmith Licensing Act/Increase Fees [Ed.1]
(cont'd)

STATUTE

§ 74F-3. Licenses ~~required~~; use of locksmith tools.

DESCRIPTION

A person who

1. performs or offers to perform
2. locksmith services
3. in North Carolina
4. without a license.

OFFENSE CLASS

CURRENT: Class 3 misdemeanor.

PROPOSED: Second or subsequent offense: 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 Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

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

FINDINGS

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

Bill is **inconsistent** with 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: 06/03/11

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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 889 – Amend Locksmith Licensing Act/Increase Fees [Ed.1]
(cont'd)

STATUTE

§ 74F-3. Licenses ~~required~~; use of locksmith tools.

DESCRIPTION

A person who

1. possesses
2. any locksmith tool
3. without
 - a. a locksmith license, or
 - b. an exemption under G.S. 74F-16.

PROPOSED OFFENSE CLASS

First offense: Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Locksmith tool” is a tools designed or used to open a mechanical or electrical locking device in a way other than that intended by the manufacturer. G.S. 74F-4(6).

Exemptions: E.g., (1) employees acting under the direct control and supervision of a licensed locksmith; (2) apprentices; (3) persons acting within the scope of an alarm systems license or registration; (4) merchants rekeying a lock at the time of sale, or duplicating keys; (4) towing services, automotive repairmen, repossessing companies, or motor vehicle dealers; and (5) government employees opening a locked door in a life-threatening emergency or criminal investigation. G.S. 74F-16.

Possession of burglary tools is a Class I felony. G.S. 14-55.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 889 – Amend Locksmith Licensing Act/Increase Fees [Ed.1]
(cont'd)

STATUTE

§ 74F-3. Licenses ~~required~~; required; use of locksmith tools.

DESCRIPTION

A person who

1. possesses
2. any locksmith tool
3. without
 - a. a locksmith license, or
 - b. an exemption under G.S. 74F-16.

PROPOSED OFFENSE CLASS

Second or subsequent offense: 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.

Possession of burglary tools is a Class I felony. G.S. 14-55.

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

FINDINGS

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

Bill is **inconsistent** with 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: 06/03/11

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 927 – State Pension Plan Solvency Reform Act [Ed.1]

STATUTE

§ 135-18.11. Improper receipt of decedent's retirement benefit.

DESCRIPTION

A person who

1. with the intent to defraud
2. receives money
3. by cashing, depositing, or receiving a direct deposit of a decedent's retirement benefit
4. two months or more after the date of the decedent's death
5. knowing that he or she is not entitled to the decedent's retirement benefit
6. without attempting to inform the Retirement System of the retiree's death.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

This provision applies to the Teachers' and State Employees' Retirement System of North Carolina.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with 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 927 – State Pension Plan Solvency Reform Act [Ed.1]
(cont'd)

STATUTE

§ 128-38.5. Improper receipt of decedent's retirement benefit.

DESCRIPTION

A person who

1. with the intent to defraud
2. receives money
3. by cashing, depositing, or receiving a direct deposit of a decedent's retirement benefit
4. two months or more after the date of the decedent's death
5. knowing that he or she is not entitled to the decedent's retirement benefit
6. without attempting to inform the Retirement System of the retiree's death.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

This provision applies to the North Carolina Local Governmental Employees' Retirement System.

FINDINGS

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

DATE OF REVIEW: 06/03/2011

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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 927 – State Pension Plan Solvency Reform Act [Ed.1]
(cont'd)

STATUTE

§ 135-75.2. Improper receipt of decedent's retirement benefit.

DESCRIPTION

A person who

1. with the intent to defraud
2. receives money
3. by cashing, depositing, or receiving a direct deposit of a decedent's retirement benefit
4. two months or more after the date of the decedent's death
5. knowing that he or she is not entitled to the decedent's retirement benefit
6. without attempting to inform the Retirement System of the retiree's death.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

This provision applies to the Consolidated Judicial Retirement System of North Carolina.

FINDINGS

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

DATE OF REVIEW: 06/03/2011

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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 927 – State Pension Plan Solvency Reform Act [Ed.1]
(cont'd)

STATUTE

§ 120-4.34. Improper receipt of decedent's retirement benefit.

DESCRIPTION

A person who

1. with the intent to defraud
2. receives money
3. by cashing, depositing, or receiving a direct deposit of a decedent's retirement benefit
4. two months or more after the date of the decedent's death
5. knowing that he or she is not entitled to the decedent's retirement benefit
6. without attempting to inform the Retirement System of the retiree's death.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

This provision applies to the Legislative Retirement System of North Carolina.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/2011

IMPACT ANALYSIS NOT REQUESTED YET

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 105 – Increase Penalty/2nd Degree Murder [Ed.2]

STATUTE

§ 14-17. Murder in the first and second degree defined; punishment.

DESCRIPTION

A person who

1. kills any human being
2. with
 - a. hatred, ill will or spite, or
 - b. that condition of mind which
 - i. prompts a person to take the life of another intentionally, or
 - ii. to intentionally inflict serious bodily harm which proximately results in death without just cause, excuse or justification.

OFFENSE CLASS

CURRENT: Class B2 felony.

PROPOSED: Class B1 felony.

ANALYSIS

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

All other second degree murders are punished as Class B2 felonies.

This Commission reviewed a substantially similar provision in SB 105 [Ed.1] in March 2011, and found that the Offense Classification Criteria were not applicable.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 105: INCREASE PENALTY/2ND DEGREE MURDER

PREPARED: APRIL 21, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill reclassifies certain types of second degree murder in G.S. 14-17 from Class B2 to Class B1.

SECTION 1. This section amends G.S. 14-17, Murder in the first and second degree defined; punishment, by adding subsection (b) for second degree murder. Second degree murder is defined as any murder other than that which is defined as first degree murder. Second degree murder would be reclassified from a Class B2 felony to a Class B1 felony if the murder was committed either with (i) hatred, ill will, or spite, or (ii) with that condition of mind which prompts a person to take the life of another intentionally, or to intentionally inflict serious bodily harm which proximately results in death without just cause, excuse, or justification. All other second degree murders would remain classified as Class B2 felonies.

In FY 2009/10, there were 230 convictions for second degree murder (Class B2). Under Structured Sentencing, sentence lengths for Class B2 felons range from 94 months to 393 months, depending on Prior Record Level. In FY 2009/10, the average estimated time served for second degree murder convictions was 188 months. It is not known how many of the Class B2 convictions for second degree murder would fit the criteria to be reclassified to a Class B1 under the proposed bill.

Sentence lengths for Class B1 felons range from 144 months to life without parole, depending on Prior Record Level, with an average estimated time served of 234 months in FY 2009/10. Given the sentencing range for Class B2 felons and the average sentence imposed for second degree murder convictions in FY 2009/10, all of the impact that would result from reclassifying any second degree murder offenses from Class B2 to Class B1 would occur outside the ten-year projection period. As a result, the Structured Sentencing Simulation Model could not be used to project the impact from the proposed reclassification. However, if the proposed reclassification of some second degree murder offenses from Class B2 to Class B1 were enacted, substantial long-term impact to the prison population would occur due to the longer sentence lengths available for Class B1 felony convictions and would continue as these convictions “stack up” in prison.

Finally, the proposed section would increase accessory after the fact to some second degree murder offenses from Class D to Class C. In FY 2009/10, there were three (3) convictions for accessory after the fact to second degree murder. Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable. Impact on the prison population would occur beginning in the fifth year of the projection period as a result of the longer average estimated time served (83 months for Class C compared to 63 months for Class D) and would continue as these convictions “stack up” in prison.

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 125 – Regional Schools [Ed.4]

STATUTE

§ 115C-238.56N. Criminal history record checks.

DESCRIPTION

Subsection (h):

A person who

1. as an applicant for employment at a regional school
2. willfully furnishes, supplies or otherwise gives
3. false information
4. on an employment application
5. that is the basis for a criminal history record check.

PROPOSED OFFENSE CLASS

Class A1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

G.S. 115C-238.56N, Criminal history record checks, provides that the board of directors for a regional school shall adopt a policy on whether and under what circumstances school personnel shall be required to be checked for a criminal history and shall apply its policy uniformly in requiring the criminal history checks.

The Sentencing Commission reviewed a substantially similar provision in June 2010 (HB 1724/SB 1199), regarding the proposed NC School of Biotechnology and Agriscience, and found it to be inconsistent with the Offense Classification Criteria for a Class A1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 144 – Cash Converters Must Keep Purchase Records [Ed.2]

STATUTE

§ 91A-10. Prohibitions.

DESCRIPTION

A cash converter who

1. purchases from any person
2. property which is known to the cash converter
3. to be stolen.

PROPOSED OFFENSE CLASS

Class H felony (G.S. 14-71, G.S. 14-71.1, G.S. 14-72(b)).

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.

G.S. 91A-11(b) provides that a violation of G.S. 91A-10(b) shall be prosecuted under the North Carolina criminal statutes, specifically, those sections pertaining to receipt and possession of stolen goods.

G.S. 14-71, Receiving stolen goods; receiving or possessing goods represented as stolen, provides that it shall be a Class H felony for a person to receive property he knows or has reasonable grounds to believe has been stolen or to receive or possess property represented as stolen.

G.S. 14-71.1, Possessing stolen goods, provides that it shall be a Class H felony for a person to possess property he knows or has reasonable grounds to believe to be stolen.

G.S. 14-72(b), provides that it shall be a Class H felony to steal, receive or possess certain goods without regard to their monetary value; those certain goods include: items stolen from the person, items stolen in violation of burglary and housebreaking statutes, explosive or incendiary devices, any firearm, or any record or paper that is the property of the NC Archives.

G.S. 91A-3(2) defines a cash converter as a person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself/herself out to the public by signs, advertising, or other methods as engaging in that business. This definition does not include pawnbrokers, persons who purchase directly from manufacturers or wholesalers, precious metals dealers, persons who purchase certain goods valued at less than \$50 an item.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 144 – Cash Converters Must Keep Purchase Records [Ed.2]
(cont'd)

STATUTE

§ 91A-7.1. Record-keeping requirements for cash converters.

DESCRIPTION

A cash converter who

1. fails to keep
2. consecutively numbered records
3. of each cash purchase
4. according to the guidelines provided in this section.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (G.S. 91A-11(a)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

A cash converter is a person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods of engaging in that business (G.S. 91A-3, Definitions).

G.S. 91A-7.1(a)(1)-(7), outline the information that must be included in the record of all purchases, some of those items include: a clear and accurate description of the property purchased; the name, residence address, phone number and date of birth of the seller; the date of purchase; the type of identification and identification number accepted from the seller; a physical description of the seller; the purchase price; and a statement attesting to the fact that the item is not stolen.

G.S. 91A-7.1(b) provides that the seller shall sign the record and receive an exact copy. The records shall be available for inspection and pickup each regular workday by local law enforcement.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 144: CASH CONVERTERS MUST KEEP PURCHASE RECORDS

PREPARED: APRIL 26, 2011

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill amends Chapter 91A, Pawnbrokers and Cash Converters Modernization Act, of the General Statutes, by expanding the scope of conduct subject to the existing Class 2 misdemeanor offense found in G.S. 91A-11, Penalties. It also expands the scope of conduct subject to the existing Class H felony offenses found in G.S. 14-71, Receiving stolen goods; receiving or possessing goods represented as stolen, G.S. 14-71.1, Possessing stolen goods, and G.S. 14-72(b) (receiving stolen goods).

SECTION 6. This bill amends Chapter 91A, Pawnbrokers and Cash Converters Act, by adding “cash converter” to the group subject to regulation under Chapter 91A. Proposed G.S. 91A-7.1, Record-keeping requirements for cash converters, provides that every cash converter shall keep consecutively numbered records of each cash purchase, which shall include certain information. Further, proposed G.S. 91A-7.1(b) provides that the seller shall sign the record and shall receive an exact copy which shall be signed or initialed by the cash converter or employee of the cash converter. The records shall be available for inspection and pickup by the sheriff, sheriff’s designee, chief of police or chief’s designee. The records shall be a correct copy of the entries made of the purchase transaction, shall be carefully preserved without alteration, and shall be available during regular business hours. Existing G.S. 91A-11, Penalties, provides that a violation of any provision of Chapter 91A shall be a Class 2 misdemeanor. By amending Chapter 91A to add G.S. 91A-7.1, this bill expands the scope of the conduct subject to the existing Class 2 misdemeanor offense found in G.S. 91A-11.

The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 91A-11. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

In FY 2009/10, 25% of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 21 days. Offenders who receive an active sentence of 90 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known.

SECTION 7. This bill also expands the scope of several Class H felonies, by amending existing G.S. 91A-10, Prohibitions. Proposed G.S. 91A-10(b) provides that a cash converter shall not purchase from any person property which is known to the cash converter to be stolen, unless there is a written agreement with local or State police. Existing G.S. 91A-11, Penalties, is also amended to provide that a violation of G.S. 91A-10(b) shall be prosecuted under the North Carolina criminal statutes. Thusly, a violation of G.S. 91A-10(b) is punishable as a Class H felony under G.S. 14-71, Receiving stolen goods; receiving or possessing goods represented as stolen, G.S. 14-71.1, Possessing stolen goods, and G.S. 14-72(b) (receiving stolen goods). By adding G.S. 91A-10(b) to the offenses punishable by G.S. 14-71, G.S. 14-71.1, and G.S. 14-72, this bill expands the scope of the conduct subject to the existing Class H felony offenses found in the North Carolina criminal statutes.

It is not known how many additional convictions may result from violations of the proposed G.S. 91A-10(b). In FY 2009/10, 36% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions for this proposed offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

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 183 – Selective Vegetation Removal/State Highways [Ed.4]

STATUTE

§ 136-133.1. Outdoor advertising vegetation cutting or removal.

DESCRIPTION

Subsection (f):

A person who

1. cuts, thins, prunes, or otherwise removes
2. vegetation that is
 - a. in front of, or adjacent to, outdoor advertising, and
 - b. within the limits of the highway right-of-way
3. in order to enhance the visibility of outdoor advertising
4. without a permit from the Department of Transportation.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 136-135).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to property or serious societal injury as Class 1 misdemeanors.

G.S. 136-135 provides that it shall be a Class 1 misdemeanor for any person, firm, corporation, or association to place, erect or maintain outdoor advertising along the interstate system or primary system in violation of this Article or the rules of the Department of Transportation.

The Commission reviewed similar provisions in June 2009 (HB 1583), April 2009 (SB 983), and March 2007 (SB 150), and each time found it to be inconsistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 183 – Selective Vegetation Removal/State Highways [Ed.4]
(cont'd)

STATUTE

§ 136-133.1. Outdoor advertising vegetation cutting or removal.

DESCRIPTION

Subsection (g):

An owner of an outdoor advertising sign who

1. without
 - a. charge,
 - b. obtaining a selective vegetation removal permit,
 - c. working from the private property owner side of a controlled access fence, or
 - d. obtaining the consent of the owner of the land used to access the fence
2. cuts, trims, prunes, or removes
3. any tree or other vegetation except for native dogwoods or redbuds
4. that is
 - a. less than four inches in diameter at the height of the controlled access fence,
 - b. located within 200 feet on either side of the exiting sign location, and
 - c. a distance of 3 feet from a controlled access fence within the limits of the highway right-of-way.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor (G.S. 136-135).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to property or serious societal injury as Class 1 misdemeanors.

G.S. 136-135 provides that it shall be a Class 1 misdemeanor for any person, firm, corporation, or association to place, erect or maintain outdoor advertising along the interstate system or primary system in violation of this Article or the rules of the Department of Transportation.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 195 – Operation of Mopeds [Ed.2]

STATUTE

§ 20-10.1. Mopeds.

DESCRIPTION

Subsection (a):

A person under 17 years of age who

1. operates a moped
2. upon any highway or public vehicular area of this State
3. without having first completed the graduated drivers license process.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor (pursuant to G.S. 20-35(a)).

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

The Sentencing Commission reviewed an substantially similar provision in HB 238 in February 2009, and found it to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor, but noted that it would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

DATE OF REVIEW: 06/03/11

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 315 – Roadside Campaign Signs [Ed.2]

STATUTE

§136-32. Regulation of signs.

DESCRIPTION

Subsection (e)

A person who:

1. steals, defaces, vandalizes, or unlawfully removes
2. a political sign
3. lawfully placed under this section.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 136-32(b) provides that during the period beginning on the 30th day before the beginning date of “one-stop” early voting and ending the 10th day after the primary or election day, persons may place political signs as provided in this section.

G.S. 136-32(d) provides that a permittee must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected, and that signs must be placed in accordance with the following: no sign shall be permitted in the right-of-way of a fully controlled access highway, no sign shall be closer than three feet from the edge of the pavement, no sign shall obscure visibility at an intersection, no sign shall be higher than 42 inches above the pavement, no sign shall be larger than 864 square inches, and no sign shall obscure or replace another sign.

This Commission reviewed a substantially similar provision in SB 315 [Ed.1] in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

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 374 – Landowner Protection Act [Ed.2]

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (a):

A person who

1. hunts or attempts to hunt
2. by discharging a firearm, bow and arrow, or crossbow
3. from, on, across, or over
4. the right-of-way of any State-maintained public road or highway,
5. except as allowed on State game lands.

PROPOSED OFFENSE CLASS

First offense: Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

The statute does not provide for a specific fine or other penalty for the first violation, but does provide so for second and subsequent violations.

The term “to hunt” is defined in G.S. 113-130(5a), and means, to take wild animals or wild birds.

This Commission reviewed a substantially similar provision in SB 374 [Ed.1] in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 3 Misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

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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 374 – Landowner Protection Act [Ed.2] (cont’d)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (a):

A person who

1. hunts or attempts to hunt
2. by discharging a firearm, bow and arrow, or crossbow
3. from, on, across, or over
4. the right-of-way of any State-maintained public road or highway,
5. except as allowed on State game lands.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, within three years: Class 2 misdemeanor.

Punishable by a fine of at least \$250 and the loss of hunting privileges for a period of 12 months from the date of conviction.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

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

The term “to hunt” is defined in G.S. 113-130(5a), and means, to take wild animals or wild birds.

This Commission reviewed a substantially similar provision in SB 374 [Ed.1] in April 2011, and found it to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

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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 374 – Landowner Protection Act [Ed.2] (cont’d)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (b):

A person who

1. possess a loaded firearm
2. outside the passenger compartment of a vehicle
3. while on the roadway or highway right-of-way
4. while in the act of hunting or attempting to hunt.

PROPOSED OFFENSE CLASS

First offense: Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

The statute does not provide for a specific fine or other penalty for the first violation, but does provide so for second and subsequent violations.

G.S. 113-291.12(b) further provides that it is not unlawful to commit such an act if the offender is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land, dated within the last 12 months.

This Commission reviewed a substantially similar provision in SB 374 [Ed.1] in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 3 Misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

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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 374 – Landowner Protection Act [Ed.2] (cont’d)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (b):

A person who

1. possess a loaded firearm
2. outside the passenger compartment of a vehicle
3. while on the roadway or highway right-of-way
4. while in the act of hunting or attempting to hunt.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, within three years: Class 2 misdemeanor.

Punishable by a fine of at least \$250 and the loss of hunting privileges for a period of 12 months from the date of conviction.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

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

G.S. 113-291.12(b) further provides that it is not unlawful to commit such an act if the offender is the owner or lessee of the land abutting the right-of-way or has on his or her person the written permission of the owner or lessee of the land, dated within the last 12 months.

This Commission reviewed a substantially similar provision in SB 374 [Ed.1] in April 2011, and found it to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

Bill is **inconsistent** with 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 PREPARED: 06/03/11

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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 374 – Landowner Protection Act [Ed.2] (cont’d)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (c):

A person who

1. from the land of another
 - a. hunts or attempts to hunt, or
 - b. takes fish from private ponds
2. without having on one’s person
3. the written permission,
4. dated within the last 12 months,
5. of the landowner or lessee or the landowner’s or lessee’s designee.

PROPOSED OFFENSE CLASS

First offense: Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

The statute does not provide for a specific fine or other penalty for the first violation, but does provide so for second and subsequent violations.

G.S. 113-291.12(c) further provides that a person shall have written permission to hunt if a landowner or lessee granted permission to hunt to a hunting club, and the offender is carrying both a current membership card for the hunting club and a copy of valid written permission granted to the hunting club.

The term “private pond” is defined in G.S. 133-129(13), and is a body of water arising within and lying wholly upon a single tract of privately owned land, from which fish cannot escape and into which fish cannot enter from public fishing waters at any time.

This Commission reviewed a substantially similar provision in SB 374 [Ed.1] in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 3 Misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE PREPARED: 06/03/11

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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 374 – Landowner Protection Act [Ed.2] (cont'd)

STATUTE

§113-291.12. Hunting from rights-of-way; hunting on the land of another.

DESCRIPTION

Subsection (c):

A person who

1. from the land of another
 - a. hunts or attempts to hunt, or
 - b. takes fish from private ponds
2. without having on one's person
3. the written permission,
4. dated within the last 12 months,
5. of the landowner or lessee or the landowner's or lessee's designee.

PROPOSED OFFENSE CLASS

Second and subsequent offenses, within 3 years: Class 2 misdemeanor.

Punishable by a fine of at least \$250 and the loss of hunting privileges for a period of 12 months from the date of conviction.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

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

G.S. 113-291.12(c) further provides that a person shall have written permission to hunt if a landowner or lessee granted permission to hunt to a hunting club, and the offender is carrying both a current membership card for the hunting club and a copy of valid written permission granted to the hunting club.

The term "private pond" is defined in G.S. 133-129(13), and is a body of water arising within and lying wholly upon a single tract of privately owned land, from which fish cannot escape and into which fish cannot enter from public fishing waters at any time.

This Commission reviewed a substantially similar provision in SB 374 [Ed.1] in April 2011, and found it to be inconsistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS

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

Bill is **inconsistent** with 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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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 523 – North Carolina Casino Gaming Act [Ed.1]

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(1):

A person who

1. willfully and corruptly
2. provides information, or
3. makes a statement, whether written or oral,
4. that is false and material
5. and that is required by Chapter 18D (North Carolina Casino Gaming Act)
6. to the North Carolina State Lottery Commission or the ALE Division.

PROPOSED OFFENSE CLASS

Class F felony (G.S. 14-209).

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.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

G.S. 14-209, Penalties for perjury, provides that any person who willfully and corruptly commits perjury, on his oath or affirmation, in any suit, controversy, matter or cause, pending in any of the courts of the State, or in any deposition or affidavit taken pursuant to law, or in any oath or affirmation duly administered of or concerning any matter or thing whereof such person is lawfully required to be sworn or affirmed, shall be guilty of a Class F felony.

FINDINGS



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



Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(2)a:

A person who

1. willfully fails to
2. report, pay or truthfully account for and pay over
3. any license fee, tax, or assessment imposed under Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 18D-205, Collection of fees and fines, provides that the Commission has the power to levy and collect fees from applicants, licensees, and permittees to fund Commission operations, and to provide for the assessment and collection of fines and penalties for violations of Chapter 18D.

The Commission is the North Carolina State Lottery Commission established pursuant to Chapter 18C of the General Statutes (G.S. 18D-103(10)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(2)a:

A person who

1. willfully fails to
2. report, pay or truthfully account for and pay over
3. any license fee, tax, or assessment imposed under Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

G.S. 18D-205, Collection of fees and fines, provides that the Commission has the power to levy and collect fees from applicants, licensees, and permittees to fund Commission operations, and to provide for the assessment and collection of fines and penalties for violations of Chapter 18D.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(2)b:

A person who

1. willfully
2. attempts in any manner to
3. evade or defeat
4. any license fee, tax, or assessment imposed under Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

G.S. 18D-205, Collection of fees and fines, provides that the Commission has the power to levy and collect fees from applicants, licensees, and permittees to fund Commission operations, and to provide for the assessment and collection of fines and penalties for violations of Chapter 18D.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(2)b:

A person who

1. willfully
2. attempts in any manner to
3. evade or defeat
4. any license fee, tax, or assessment imposed under Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

G.S. 18D-205, Collection of fees and fines, provides that the Commission has the power to levy and collect fees from applicants, licensees, and permittees to fund Commission operations, and to provide for the assessment and collection of fines and penalties for violations of Chapter 18D.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(3):

A licensed entity, gaming employee, key employee, or any other person who

1. permits a slot machine to be operated, transported, repaired, or opened
2. on the premises of a licensed facility
3. by a person other than one licensed or permitted by the North Carolina State Lottery Commission pursuant to Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Article 3 of Chapter 18D provides for the licensing and permitting of slot machines, principals, key employees, suppliers, manufacturers, etc.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A gaming employee is any employee of a slot machine licensee (G.S. 18D-103(19)).

A key employee is any individual who is employed in a director or department head capacity and who makes discretionary decisions that regulate slot machine operations (G.S. 18D-103(26)).

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(3):

A licensed entity, gaming employee, key employee, or any other person who

1. permits a slot machine to be operated, transported, repaired, or opened
2. on the premises of a licensed facility
3. by a person other than one licensed or permitted by the North Carolina State Lottery Commission pursuant to Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A gaming employee is any employee of a slot machine licensee (G.S. 18D-103(19)).

A key employee is any individual who is employed in a director or department head capacity and who makes discretionary decisions that regulate slot machine operations (G.S. 18D-103(26)).

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(4):

A licensed entity or other person who

1. manufactures, supplies, or places slot machines into play, or
2. displays slot machines on the premise of a licensed facility
3. without the authority of the North Carolina State Lottery Commission.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

G.S. 14-306 and G.S. 14-306.3 provide that it is unlawful to possess any machine, apparatus or device that is a slot machine, to promote, operate or conduct a server-based electronic game promotion, or to possess any gamer terminal with a display that simulates a game ordinarily played on a slot machine. G.S. 14-309(a) provides that the first violation of either of these statutes is a Class 1 misdemeanor.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(4):

A licensed entity or other person who

1. manufactures, supplies, or places slot machines into play, or
2. displays slot machines on the premise of a licensed facility
3. without the authority of the North Carolina State Lottery Commission.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

G.S. 14-306 and G.S. 14-306.3 provide that it is unlawful to possess any machine, apparatus or device that is a slot machine, to promote, operate or conduct a server-based electronic game promotion, or to possess any gamer terminal with a display that simulates a game ordinarily played on a slot machine. G.S. 14-309(a) provides that the second violation of either of these statutes is a Class H felony, and third and subsequent violations are Class G felonies.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(5):

A licensed entity or other person who

1. manufactures, supplies, operates, carries on, or exposes for play
2. any slot machine
3. after the person's license has expired
4. and prior to the actual renewal of the license
5. except as provided in G.S. 18D-321.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 18D-321, License renewals, outlines the license renewal process and timeline for licenses issued under Chapter 18D of the General Statutes.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(5):

A licensed entity or other person who

1. manufactures, supplies, operates, carries on, or exposes for play
2. any slot machine
3. after the person's license has expired
4. and prior to the actual renewal of the license
5. except as provided in G.S. 18D-321.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

G.S. 18D-321, License renewals, outlines the license renewal process and timeline for licenses issued under Chapter 18D of the General Statutes.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(6)a:

A person who

1. while on the premises of a licensed facility,
2. knowingly uses
 - a. currency other than lawful coin or legal tender of the United States or
 - b. a coin not of the same denomination as the coin intended for use in the slot machine
3. with intent to
 - a. cheat or defraud a licensed gaming entity or the State, or
 - b. damage the slot machine.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 18D-510(6)b provides that it shall be lawful for an individual to use gaming billets, tokens, or similar objects issued by the licensed gaming entity which are approved by the Commission.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(6)a:

A person who

1. while on the premises of a licensed facility,
2. knowingly uses
 - a. currency other than lawful coin or legal tender of the United States or
 - b. a coin not of the same denomination as the coin intended for use in the slot machine
3. with intent to
 - a. cheat or defraud a licensed gaming entity or the State, or
 - b. damage the slot machine.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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. 18D-510(6)b provides that it shall be lawful for an individual to use gaming billets, tokens, or similar objects issued by the licensed gaming entity which are approved by the Commission.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(7)a:

A person who

1. uses or possesses
 - a. a cheating or thieving device,
 - b. counterfeit or altered billet, ticket, token or similar objects accepted by a slot machine, or
 - c. counterfeit or altered slot machine-issued tickets or vouchers
2. at a licensed facility.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 18D-510(a)(7)b provides that an authorized employee of a licensee or an employee of the Commission may possess and use the items listed as unlawful in subsection (a)(7)a.

G.S. 18D-510(a)(7)c provides that the term “cheating or thieving device” includes, but is not limited to, a device to facilitate the alignment of any winning combination or to remove for any slot machine money or other contents.

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(7)a:

A person who

1. uses or possesses
 - a. a cheating or thieving device,
 - b. counterfeit or altered billet, ticket, token or similar objects accepted by a slot machine, or
 - c. counterfeit or altered slot machine-issued tickets or vouchers
2. at a licensed facility.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

G.S. 18D-510(a)(7)b provides that an authorized employee of a licensee or an employee of the Commission may possess and use the items listed as unlawful in subsection (a)(7)a.

G.S. 18D-510(a)(7)c provides that the term "cheating or thieving device" includes, but is not limited to, a device to facilitate the alignment of any winning combination or to remove for any slot machine money or other contents.

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: 06/03/11

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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 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(8)a:

A person who

1. knowingly possesses or uses
2. while on the premises of a licensed facility
3. a key or device
4. designed for the purpose of, and suitable for,
5. opening or entering any slot machine or coin box
6. located on the premises of the licensed facility.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 18D-510(a)(8)b provides that an authorized employee of a licensee or a member of the Commission may possess and use such devices in the performance of the duties of employment.

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(8)a:

A person who

1. knowingly possesses or uses
2. while on the premises of a licensed facility
3. a key or device
4. designed for the purpose of and suitable for
5. opening or entering any slot machine or coin box
6. located on the premises of the licensed facility.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

G.S. 18D-510(a)(8)b provides that an authorized employee of a licensee or a member of the Commission may possess and use such devices in the performance of the duties of employment.

A licensed facility is the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines (G.S. 18D-103(28)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(9):

A person or licensed entity who

1. possesses any device, equipment, or material which
2. he knows has been manufactured, distributed, sold, tampered with, or serviced
3. in violation of the provisions of Chapter 18D (North Carolina Casino Gaming Act)
4. with the intent to use the device, equipment, or material as though it had been manufactured, distributed, sold, tampered with, or serviced pursuant to Chapter 18D.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(9):

A person or licensed entity who

1. possesses any device, equipment, or material which
2. he knows has been manufactured, distributed, sold, tampered with, or serviced
3. in violation of the provisions of Chapter 18D (North Carolina Casino Gaming Act)
4. with the intent to use the device, equipment, or material as though it had been manufactured, distributed, sold, tampered with, or serviced pursuant to Chapter 18D.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(10):

A person who

1. sells, offers for sale, represents, or passes off as lawful
2. any device, equipment, or material which
3. the person or licensed entity knows has been manufactured, distributed, sold, tampered with, or serviced in violation of Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(10):

A person who

1. sells, offers for sale, represents, or passes off as lawful
2. any device, equipment, or material which
3. the person or licensed entity knows has been manufactured, distributed, sold, tampered with, or serviced in violation of Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(11):

A person who

1. works or is employed in a position which requires licensing or permitting under Chapter 18D (North Carolina Casino Gaming Act),
2. and does not first obtain the requisite license or permit.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 18D-307, Licensing of key employees, provides that all key employees shall obtain a license from the Commission and that license shall be nontransferable.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

A key employee is any individual who is employed in a director or department head capacity and who makes discretionary decisions that regulate slot machine operations (G.S. 18D-103(26)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(11):

A person who

1. works or is employed in a position which requires licensing or permitting under Chapter 18D(North Carolina Casino Gaming Act),
2. and does not first obtain the requisite license or permit.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

G.S. 18D-307, Licensing of key employees, provides that all key employees shall obtain a license from the Commission and that license shall be nontransferable.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

A key employee is any individual who is employed in a director or department head capacity and who makes discretionary decisions that regulate slot machine operations (G.S. 18D-103(26)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(12):

A licensed entity who

1. employs or continues to employ
2. an individual in a position which requires license or permit under Chapter 18D (North Carolina Casino Gaming Act),
3. and the employee
 - a. is not licensed or permitted under Chapter 18D, or
 - b. is prohibited from accepting employment from a licensee.

PROPOSED OFFENSE CLASS

First violation, Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Chapter 18D of the General Statutes is established by this bill and is titled the North Carolina Casino Gaming Act.

G.S. 18D-307, Licensing of key employees, provides that all key employees shall obtain a license from the Commission and that license shall be nontransferable.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A key employee is any individual who is employed in a director or department head capacity and who makes discretionary decisions that regulate slot machine operations (G.S. 18D-103(26)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (a)(12):

A licensed entity who

1. employs or continues to employ
2. an individual in a position which requires license or permit under Chapter 18D (North Carolina Casino Gaming Act),
3. and the employee
 - a. is not licensed or permitted under Chapter 18D, or
 - b. is prohibited from accepting employment from a licensee.

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

G.S. 18D-307, Licensing of key employees, provides that all key employees shall obtain a license from the Commission and that license shall be nontransferable.

A licensed entity is any slot machine licensee, manufacturer licensee, supplier licensee, or other person licensed by the Commission under Chapter 18D (G.S. 18D-103(27)).

A key employee is any individual who is employed in a director or department head capacity and who makes discretionary decisions that regulate slot machine operations (G.S. 18D-103(26)).

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (b):

A person who

1. provides any false or misleading information, or
2. makes any false or misleading statement,
3. whether written or oral,
4. to the North Carolina State Lottery Commission or the ALE Division
5. if that information is required by Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

First violation, Class A1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

FINDINGS

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

Bill is **inconsistent** with 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: SB 523 – North Carolina Casino Gaming Act [Ed.1] (cont'd)

STATUTE

§ 18D-510. Prohibited acts; penalties.

DESCRIPTION

Subsection (b):

A person who

1. provides any false or misleading information, or
2. makes any false or misleading statement,
3. whether written or oral,
4. to the North Carolina State Lottery Commission or the ALE Division
5. if that information is required by Chapter 18D (North Carolina Casino Gaming Act).

PROPOSED OFFENSE CLASS

Second or subsequent violation, 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 Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

FINDINGS

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

Bill is **inconsistent** with 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: 06/03/11

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 602 – Domestic Fowl Stray/Commercial Poultry Lands [Ed.2]

STATUTE

§ 68-25. Domestic fowls running at large after notice.

DESCRIPTION

Subsection (b):

A person who

1. permits any domestic fowls
2. to run at large
3. on the lands of a commercial poultry operation
4. of any other person
5. after having received
6. actual or constructive notice
7. of such running at large.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

For purposes of G.S. 68-25(b), a commercial poultry operation means any premises or operation where domestic poultry are fed, caged, housed, or otherwise kept for meat or egg production until sold or marketed.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 604 – NC Illegal Immigration Enforcement Act [Ed.1]

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(1):

A person who

1. for commercial advantage or private financial gain
2. transports, moves, or attempts to transport
3. into this State, or within this State
4. 10 or more aliens
5. knowing or in reckless disregard of the fact
6. that the aliens are in the United States in violation of federal law
7. in furtherance of the illegal presence of the aliens in the United States.

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.

Under G.S. 14-2.5, attempts are punished one class lower than the offense which the offender attempted to commit.

The Sentencing Commission reviewed a substantially similar provision in HB 343 in April 2011, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

Bill is **inconsistent** with 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: SB 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(2):

A person who

1. for commercial advantage or private financial gain
2. knowingly with intent to violate federal immigration law,
3. conceals, harbors, or shelters from detection
4. 10 or more aliens
5. in a place within this State, including a building or means of transportation,
6. knowing or in reckless disregard of the fact that
7. the aliens are in the United States in violation of federal law.

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 Sentencing Commission reviewed a substantially similar provision in HB 343 in April 2011, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

Bill is **inconsistent** with 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: SB 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(3):

A person who

1. for commercial advantage or private financial gain
2. encourages or induces
3. 10 or more aliens
4. to come to, enter, or reside in this State,
5. knowing or in reckless disregard of the fact
6. that the aliens' coming to, entry or residence is or will be in violation of law.

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 Sentencing Commission reviewed a substantially similar provision in HB 343 in April 2011, and found it to be inconsistent with the Offense Classification Criteria for a Class G felony.

FINDINGS

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

Bill is **inconsistent** with 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: SB 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(4):

A person who

1. for commercial advantage or private financial gain
2. engages in any conspiracy
3. to commit any offense
4. involving 10 or more aliens
5. set forth in G.S. 64-41(a).

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.

G.S. 14-2.4, Punishment for conspiracy to commit a felony, provides that unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a conspiracy to commit a Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor.

FINDINGS

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

Bill is **inconsistent** with 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: SB 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(1):

A person who

1. for commercial advantage or private financial gain
2. transports, moves, or attempts to transport
3. into this State, or within this State
4. fewer than 10 aliens
5. knowing or in reckless disregard of the fact
6. that the aliens are in the United States in violation of federal law
7. in furtherance of the illegal presence of the aliens in the United States.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Under G.S. 14-2.5, attempts are punished one class lower than the completed offense.

The Sentencing Commission reviewed a similar provision in HB 343 in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(2):

A person who

1. for commercial advantage or private financial gain
2. knowingly with intent to violate federal immigration law,
3. conceals, harbors, or shelters from detection
4. fewer than 10 aliens
5. in a place within this State, including a building or means of transportation,
6. knowing or in reckless disregard of the fact that
7. the aliens are in the United States in violation of federal law.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

The Sentencing Commission reviewed a similar provision in HB 343 in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS

- Bill is **consistent** with the Offense Classification Criteria.
- Bill is **inconsistent** with 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: SB 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(3):

A person who

1. for commercial advantage or private financial gain
2. encourages or induces
3. fewer than 10 aliens
4. to come to, enter, or reside in this State,
5. knowing or in reckless disregard of the fact
6. that the aliens' coming to, entry or residence is or will be in violation of law.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

The Sentencing Commission reviewed a similar provision in HB 343 in April 2011, and found it to be consistent with the Offense Classification Criteria for a Class 1 misdemeanor.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 604 – NC Illegal Immigration Enforcement Act [Ed.1]
(cont'd)

STATUTE

§ 64-14. Unlawfully transporting, moving, concealing, harboring, or shielding of aliens not lawfully present in the United States.

DESCRIPTION

Subsection (a)(4):

A person who

1. for commercial advantage or private financial gain
2. engages in any conspiracy
3. to commit any offense
4. involving fewer than 10 aliens
5. set forth in G.S. 64-41(a).

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

G.S. 14-2.4(b) provides that unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a misdemeanor is guilty of a misdemeanor that is one class lower than the misdemeanor he or she conspired to commit, except that a conspiracy to commit a Class 3 misdemeanor is a Class 3 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 621 – Simulated Gaming Allowed/Certain ABC Outlets
[Ed.1]

STATUTE

§ 18B-1010. Simulated gaming allowed at certain facilities; permit required.

DESCRIPTION

Subsection (g):

A permittee or sponsor who

1. fails to conduct and operate
2. a gaming event
3. in compliance with
 - a. this section, and
 - b. the terms and conditions of the registration issued by the NC Alcoholic Beverage Commission.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Upon violation of this section, a permittee shall not be eligible to apply for any other gaming event, and a sponsor shall not be eligible to sponsor any other gaming event.

G.S. 18B-1010 provides generally for the terms and regulation of gaming events held at hotels or restaurants with an on-premises malt beverage permit, an on-premises unfortified wine permit, an on-premises fortified wine permit, or a mixed beverages permit, and sponsored by a natural person at least 21 years of age, a firm or an organization.

For purposes of this section, a “permittee” is a hotel or restaurant that has an on-premises malt beverage permit, an on-premises unfortified wine permit, an on-premises fortified wine permit, or a mixed beverages permit, and a “sponsor” is a natural person at least 21 years of age, a firm or an organization, it shall not be an ABC permittee. A “gaming event” shall be sponsored by a natural person at least 21 years of age, a firm or an organization, it shall not be sponsored by an ABC permittee; the sponsor shall provide chips or markers to be used by patrons and shall not accept money from the patron or the ABC permittee for the chips or markers and the Commission may allow the games of blackjack, poker, roulette, craps, raffles, and bingo at such events.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 628 – WQ Permitting/Compliance Rev. & Submissions [Ed.1]

STATUTE

§ 143-215.6B. Enforcement Procedures; criminal penalties.

DESCRIPTION

Subsection (i):

A person who

1. intentionally withholds or omits
2. information that is material
3. to a permitting or certification determination.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

Violation of this subsection may also result in a fine not to exceed \$10,000.

Currently, G.S. 143-215.6B makes it a Class 2 misdemeanor for anyone to knowingly make a false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained; to knowingly make a false statement of a material fact in a rulemaking proceeding or contested case; or to falsify, tamper with, or knowingly render inaccurate any recording or monitoring device or method required to be operated or maintained.

G.S. 143-215.6B(i) further provides that if information that is material to a permitting or certification determination is intentionally withheld... in addition to all other penalties imposed by this Article, the Commission shall deny the permit or certification.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 657 – Voting Integrity [Ed.1]

STATUTE

§ 163-82.6. Acceptance of application forms.

DESCRIPTION

Subsection (a1)(2):

A person who

1. sells or attempts to sell
2. a completed voter registration form, or
3. conditions its delivery upon a payment
4. including payment on a per voter registration application completed basis.

PROPOSED OFFENSE CLASS

Class 2 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to property, significant injury to society, or assault or affray against a person who is a vulnerable victim or a member of a protected class as Class 2 misdemeanors.

This bill adds “including payment on a per voter registration completed basis” to the existing offense, thereby expanding the scope of the provision.

The Sentencing Commission reviewed a similar provision in HB 351 in April 2011 and found it to be consistent with the Offense Classification Criteria for a Class 2 misdemeanor.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 678 – Automotive Glass Repair/Ins. Coverage [Ed.1]

STATUTE

§ 58-33-78. Special provisions for automotive glass repair.

DESCRIPTION

An insurer who

1. in any manner
2. coerces or induces
3. an insured
4. to use an automotive glass repair service provider
5. other than the insured's chosen service provider
6. if the insured has chosen a service provider.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 678 – Automotive Glass Repair/Ins. Coverage [Ed.1] (cont'd)

STATUTE

§ 58-33-78. Special provisions for automotive glass repair.

DESCRIPTION

An insurer who

1. requires that a claimant's motor vehicle be inspected before approving a claim for automotive glass work,
2. does not disclose to the insured any affiliation or business arrangement with an automotive glass repair service provider, or
3. solicits automotive glass work, or
4. engages in any action that may be construed as inducement, coercion, or sales activities in the course of the inspection.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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: SB 684 – Post-Release Supervision/Sex Offenders [Ed.1]

STATUTE

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

DESCRIPTION

A person who

1. is sentenced for a Class B1 through E felony and
2. is subject to the registration requirements of Article 27A of Chapter 14 of the General Statutes.

PUNISHMENT RANGE

CURRENT (if applicable): Maximum term of imprisonment is equal to the sum of the minimum term and 20% of the minimum term of imprisonment, rounded to the next highest month plus 9 months.

PROPOSED: Maximum term of imprisonment shall be equal to the sum of the minimum term and 20% of the minimum term of imprisonment, rounded to the next highest month plus 60 additional months.

ANALYSIS

Currently, persons subject to the registration requirements of Article 27A of Chapter 14 are subject to 5 years (60 months) of post-release supervision and a 9 month revocation period. This bill would subject those persons to 5 years (60 months) of post-release supervision and a 5 year (60 months) revocation period.

Article 27A, Sex Offender and Public Protection Registration Programs, of Chapter 14, provides for the registration requirements for sex offenders.

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: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 684: POST-RELEASE SUPERVISION/SEX OFFENDERS

PREPARED: JUNE 1, 2011

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

This bill amends G.S. 15A-1340.17, Punishment limits for each class of offense and prior record level, by extending the post-release supervision revocation period for certain sex offenders, and expands the scope of the existing offense in G.S. 5A-11, Criminal contempt.

SECTION 1. This section amends G.S. 15A-1340.17, Punishment limits for each class of offense and prior record level, by adding subsection (f), which provides that offenders sentenced for a Class B1 through E felony that is a reportable conviction subject to the registration requirements of Article 27A of Chapter 14 (Sex offender registration) of the General Statutes, the maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent of the minimum term of imprisonment, rounded to the next highest month, plus 60 additional months. Currently, persons subject to the registration requirements of Article 27A of Chapter 14 are subject to 5 years (60 months) of post-release supervision (PRS) and a 9 month revocation period. This bill would subject those persons to 5 years (60 months) of PRS and a 5 year (60 months) revocation period.

In FY 2009/10, there were 436 Class B1-E convictions requiring sex offender registration (*see* Table 1). Of these, 352 received an active sentence. One of the 352 offenders had a life without parole sentence imposed -- leaving 351 offenders eligible for PRS. In addition, there were 84 felons required to register as a sex offender who received a non-active sentence. Some portion of this group of 84 would be revoked to prison and would receive PRS upon release from prison.

Table 1: Class B1-E Convictions Requiring Registration as a Sex Offender

Offense Class	Non-Active Sentence	Active Sentence	Estimated Time to be Served (in months)*	Total
Class B1	0	118	254.6	118
Class B2	0	14	189.5	14
Class C	0	84	82.2	84
Class D	1	17	61.6	18
Class E	83	119	29.2	202
Total	84	352	125.7	436

* Excludes one offender who had a life without parole sentence imposed.

DATA SOURCE(S): NC Sentencing and Policy Advisory Commission, FY 2009/10 Structured Sentencing Simulation Data

For offenders under PRS required to register as a sex offender under this proposal, their maximum sentence would increase by an additional 51 months (60 months less the 9 months of revocation period currently added to the maximum sentence for those offenders sentenced as a Class B1-E felon under Structured Sentencing), as shown in the examples provided.

Example	Minimum Sentence	Maximum Sentence	<i>Proposed</i> Maximum Sentence
Class B1	238 months	295 months	346 months
Class E	29 months	44 months	95 months

Under the proposed changes to PRS, it is not known how many offenders will be revoked from PRS, how many periods of imprisonment may be served (a single period or multiple periods for revocation),¹ the length of imprisonment that will be served, or the lag-time from placement on PRS to revocation to prison.

The computerized simulation model currently used for the prison population projections does not have the capability to model different PRS revocation periods for subgroups of offenders; therefore, the model could not be run to project the impact of this bill. However, additional prison beds will be needed if this bill is enacted.

Increasing the revocation period from 9 months to 60 months could result in significant impact on the prison population, depending on the numbers involved and the policies and practices regarding the PRS revocations for this group. Based on the current revocation rate and the current PRS policies and practices, any period of imprisonment greater than 9 months will result in the need for additional prison beds.

This section is effective December 1, 2011, and applies to offenses committed on or after that date.

Additional Background Information

Based on data from DOC (ASQ query), there were 150 offenders who were convicted of a sexual assault or other sexual offense and exited from the Division of Community Corrections' PRS supervision in FY 2009/10.² Seventy-one of the 150 offenders were either revoked due to violations of their PRS or elected to serve their sentence.

Table 2 is based on data from the Sentencing Commission's 2010 biennial recidivism study and provides information on the technical revocation rates and rearrest rates for Class B1-E prison releases in FY 2005/06 under PRS. Table 2 compares prison releases under PRS that are required to register as a sex offender with all other prison releases under PRS. The technical revocation rates are higher for PRS offenders registered as sex offenders than those that are not registered as sex offenders for each year of the three-year follow-up. However, the rearrest rates are higher for non-sex offenders on PRS for each year of the three-year follow-up.

¹ Under current practice by the Post-Release Supervision and Parole Commission, offenders on PRS serve one period of revocation in prison for the entire 9 months if revoked for a violation of their conditions of PRS. Statutory language indicates shorter (and possibly multiple) periods of imprisonment are allowed. It is not known if the Commission will change its practice for these offenders.

² The DOC's ASQ query did not specify whether the offenders convicted of these sexual offenses were required to register as a sexual offender or not. However, since the offense class for these sexual offenses would be Class B1-E in order to be eligible for PRS, these offenders are probably required to register as sex offenders.

140 SOURCE: NC Sentencing and Policy Advisory Commission, FY 2009/10 Structured Sentencing Simulation Data. NC Sentencing and Policy Advisory Commission, FY 2005/06 Correctional Program Evaluation Data. NC Department of Correction, Automated System Query (ASQ).

Table 2: Technical Revocation Rates and Rearrest Rates for Prison Releases under Post-Release Supervision by Registered Sex Offender or Non-Sex Offender

Type of Prison Releases on PRS	Number	Technical Revocation Rates		
		Year 1	Year 2	Year 3
Registered Sex Offender	203	11%	18%	25%
Non-Sex Offender	1,806	7%	12%	15%
Total	2,009	8%	12%	16%

Type of Prison Releases on PRS	Number	Rearrest Rates		
		Year 1	Year 2	Year 3
Registered Sex Offender	203	8%	18%	26%
Non-Sex Offender	1,806	22%	38%	47%
Total	2,009	21%	36%	45%

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2005/06 Correctional Program Evaluation Data

SECTIONS 5 & 6. These sections expand the scope of G.S. 5A-11, Criminal Contempt, by amending G.S. 15A-1368.2(b) and by adding a new subsection to G.S. 5A-11(a).

G.S. 5A-11(a)(9b) provides that willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction shall be criminal contempt. Criminal contempt is subject to censure, imprisonment up to 30 days, and a fine of not more than \$500, or any combination of the three.

Working in conjunction with new G.S. 5A-11(a)(9b), G.S. 15A-1368.2(b) is amended to provide that willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a reportable conviction is punishable as contempt of court, and that any period of time during which a sex offender is not actually released on post-release supervision due to the offender's resistance of that release shall toll the running of the additional period of supervised release. Further, the amendment to G.S. 15A-1368.2(b) provides that a prisoner punished for the offense of contempt of court under subsection (b) is not eligible for time served against the sentence for which the prisoner is subject to post-release supervision.

The Sentencing Commission does not maintain information on criminal contempt convictions. Criminal contempt may result in up to 30 days of incarceration pursuant to G.S. 5A-12(a). Offenders serving a sentence for criminal contempt are housed in county jails. Therefore, criminal contempt violations as a result of this proposed change would not be expected to have a significant impact on the prison population. The impact on local jail populations is not known, but could be substantial. It appears to be the intent of the bill that the offender stays in jail for an unlimited period of time until he/she is willing to comply with PRS.

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 707 – School Violence Prevention Act [Ed.1]

STATUTE

§ 14-458.2. Cyber-bullying of school employee by student; penalty.

DESCRIPTION

Subsection (b):

A student who

1. uses a computer or computer network
2. to cyber-bully
3. a school employee.

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.

Per G.S. 14-458.2, the offense of cyber-bullying includes, but is not limited to, building a fake profile or Web site, posting or encouraging others to post on the Internet private, personal, or sexual information pertaining to a school employee, planting statements, whether true or false tending to provoke or actually provoking any third party to stalk or harass a school employee, signing a school employee up for a pornographic Internet site.

Existing G.S. 14-458.1, Cyber-bullying; penalty, provides that it shall be a Class 1 misdemeanor for a person 18 years of age or older to engage in the offense of cyber-bullying, and it shall be a Class 2 misdemeanor for a person under the age of 18 to so engage.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 707 – School Violence Prevention Act [Ed.1] (cont'd)

STATUTE

§ 14-34.10. Felony assault on a school employee.

DESCRIPTION

A person who

1. is a student 16 years of age or older
2. commits a violation under G.S. 14-33(c)(6)
3. against a school employee.

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.

G.S. 14-33(c)(6) provides that it shall be a Class A1 misdemeanor to commit an assault on a school employee or school volunteer when the employee or volunteer is attempting to discharge his duties as an employee or volunteer, or to commit an assault on a school employee or school volunteer as a result of the discharge of his duties as a school employee or volunteer.

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 707 – School Violence Prevention Act [Ed.1] (cont'd)

STATUTE

§ 115C-276. Duties of superintendent.

DESCRIPTION

A superintendent who

1. has personal knowledge or actual notice
2. from school personnel that
3. an act has occurred on school property involving
 - a. assault involving use of a weapon or resulting in serious personal injury,
 - b. sexual assault, sexual offense, or rape
 - c. kidnapping,
 - d. indecent liberties with a minor, or
 - e. possession of a firearm, weapon, or controlled substance in violation of the law
4. and fails to immediately report the act to the appropriate local law enforcement agency.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 115C-288(g) provides that it shall be a Class 3 misdemeanor for a school principal with personal knowledge or actual notice that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law to fail to immediately report such act to the superintendent or local law enforcement.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 707 – School Violence Prevention Act [Ed.1] (cont'd)

STATUTE

§ 14-266.4. Intimidation of school employee by school administrator to prevent employee from reporting assault by student on employee; failure to report assault on school employee.

DESCRIPTION

Subsection (a):

A person who

1. is an employer or supervisor
2. of a school employee
3. by threats, menaces, or in any other manner
4. intimidates or attempts to intimidate
5. the school employee from
6. reporting an assault under G.S. 14-33 or 14-34.10
7. to a law enforcement officer or law enforcement agency.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 14-33, Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

G.S. 14-34.10, Felony assault on a school employee, it shall be a Class H felony for a student, 16 years old or older, to commit a violation of G.S. 14-33(c)(6) (assault on a school employee during the discharge of duties a Class A1 misdemeanor) against a school employee.

G.S. 14-226, Intimidating or interfering with witnesses, provides that it shall be a Class H felony for any person, by threats, menaces, or in any other manner, to intimidate or attempt to intimidate a person acting as a witness in any of the courts of this State.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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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 707 – School Violence Prevention Act [Ed.1] (cont'd)

STATUTE

§ 14-266.4. Intimidation of school employee by school administrator to prevent employee from reporting assault by student on employee; failure to report assault on school employee.

DESCRIPTION

Subsection (b):

A person who

1. is an employer or supervisor
2. of a school employee
3. knows
4. that a school employee has been assaulted by a student
5. in violation of G.S. 14-33 or 14-34.10
6. fails to report the assault.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 14-33, Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

G.S. 14-34.10, Felony assault on a school employee, it shall be a Class H felony for a student, 16 years old or older, to commit a violation of G.S. 14-33(c)(6) (assault on a school employee during the discharge of duties a Class A1 misdemeanor) against a school employee.

Existing G.S. 115C-288(g) provides that it shall be a Class 3 misdemeanor for a school principal with personal knowledge or actual notice that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law to fail to immediately report such act to the superintendent or local law enforcement.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 737 – UI/Five-Hour Public Service Requirement [Ed.1]

STATUTE

§ 96-13. Benefit eligibility conditions.

DESCRIPTION

Subsection (h):

A person who

1. while receiving unemployment insurance benefits
2. fails to perform the required volunteer public service and
3. falsifies the substantiating written excuse.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 96-13(h) establishes a five hour weekly volunteer public service requirement for persons eligible to receive unemployment insurance benefits, beginning in their ninth week of eligibility. An individual shall not be disqualified from benefits if the individual fails to engage in volunteer public service due to personal illness substantiated by a written excuse from a licensed physician or due to a documented family emergency and the individual makes up the hours the following week.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 743 – Encourage Volunteer Health Care Providers [Ed.2]

STATUTE

§ 90-12.1B. Retired limited volunteer license.

DESCRIPTION

Subsection (e):

A person who

1. is the holder of a retired limited volunteer license
2. practices medicine or surgery
3. at places other than clinics that specialize in the treatment of indigent patients.

PROPOSED OFFENSE CLASS

Class 3 misdemeanor.

Fine of not less than \$25, nor more than \$50 for each offense.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in minor injury to persons, minor injury to property, or minor injury to society as Class 3 misdemeanors.

G.S. 90-12.1B(a) provides that a “retired limited volunteer license” may be issued to an applicant who is a physician and who has allowed his or her license to practice medicine and surgery in this State or another state to become inactive, and that the holder of such license may only practice medicine and surgery at clinics that specialize in the treatment of indigent patients.

Existing G.S. 90-12.1A, Limited volunteer license, provides that it shall be a Class 3 misdemeanor for any person who has been granted a limited volunteer license under this section to practice medicine or surgery at places other than clinics that specialize in the treatment of indigent patients.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 762 – Assault on Law Enforcement & EM Worker/Felony
[Ed.1]

STATUTE

§ 14-33.3. Simple assault on law enforcement officer.

DESCRIPTION

A person who

1. in the course of committing an
 - a. assault,
 - b. assault and battery, or
 - c. affray
2. assaults a law enforcement officer
3. while the officer is discharging or attempting to discharge official duties.

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.

Assaulting an officer or employee of the State or any political subdivision who is discharging or attempting to discharge official duties is a Class A1 misdemeanor (G.S. 14-33(c)(4)).

Assaulting a company police officer or campus police officer in the performance of the officer's official duties is a Class A1 misdemeanor (G.S. 14-33(c)(8)).

The Commission reviewed an identical provision in May 2009 (SB 1036) and found it to be inconsistent with the Offense Classification Criteria for a Class I felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 762 – Assault on Law Enforcement & EM Worker/Felony
[Ed.1] (cont'd)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician.

DESCRIPTION

Subsection (a):

A person who

1. commits an assault or affray upon
2. a. an emergency medical technician,
b. a medical responder,
c. an emergency department nurse or physician, or
d. a firefighter
3. while such person is discharging or attempting to discharge official duties.

OFFENSE CLASS

CURRENT: Class A1 misdemeanor.

PROPOSED: 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 Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in serious injury to person or battery of a person who is a vulnerable victim or a member of a protected class as Class A1 misdemeanors.

The Commission reviewed an identical provision in May 2009 (SB 1036) and found it to be inconsistent with the Offense Classification Criteria for a Class I felony, but noted that it would be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 762 – Assault on Law Enforcement & EM Worker/Felony
[Ed.1] (cont'd)

STATUTE

§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician.

DESCRIPTION

Subsection (b):

A person who

1. commits an assault or affray
 - a. inflicting serious bodily injury, or
 - b. using a deadly weapon other than a firearm
2. upon
 - a. an emergency medical technician,
 - b. a medical responder,
 - c. an emergency department nurse or physician, or
 - d. a firefighter
3. while such person is discharging or attempting to discharge official duties.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class H felony.

ANALYSIS

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

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

The Commission reviewed an identical provision in May 2009 (SB 1036) and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 762 – Assault on Law Enforcement & EM Worker/Felony
[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
3. in an area
 - a. where a declared state of emergency exists, or
 - b. within the immediate vicinity of an actual or imminent riot.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: 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 Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

“Emergency personnel” includes law enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, and other persons providing essential services during the emergency.

The Commission reviewed an identical provision in May 2009 (SB 1036) and found it to be inconsistent with the Offense Classification Criteria for a Class I felony, but noted that it would be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

SB 762: ASSAULT ON LAW ENFORCEMENT & EM WORKER/FELONY

PREPARED: MAY 19, 2011

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

SECTION 1. This bill creates a new Class I felony. G.S. 14-33.3, Simple assault on law enforcement officer, provides that it shall be a Class I felony for any person, while in the course of committing any assault, assault and battery, or affray, to assault a law enforcement officer while the officer is discharging or attempting to discharge his official duties. This conduct may be covered by existing offenses. Offenders who commit assault, assault and battery, or affray on law enforcement officers may currently be charged under two subsections of G.S. 14-33, Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments. G.S. 14-33(c)(4) provides that it shall be a Class A1 misdemeanor for any person who commits any assault, assault and battery or affray if, in the course of committing such, he assaults an officer or employee of the State or any political subdivision of the State while the officer or employee is discharging or attempting to discharge his official duties, and G.S. 14-33(c)(8) provides for the same penalty for assault on company or campus police officer.

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

The following table provides the frequency of convictions during FY 2009/10 for the existing offenses described above. It is not known how many of the 1,482 misdemeanor convictions may instead be convicted as Class I felonies under the proposed bill. Impact on the prison population would occur if any of these misdemeanor convictions would become Class I felony convictions under this proposed amendment. If, for example, there were ten convictions per year that would become Class I felonies under this proposed bill, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and three additional prison beds the second year.

G.S. Number	Offense Description	Offense Class	FY 2009/10 Convictions
G.S. 14-33(c)(4)	Assault Gov't Official/Employee	Class A1 misdemeanor	1,467
G.S. 14-33(c)(8)	Assault CO/Campus Police Ofcr	Class A1 misdemeanor	15
Total			1,482

Source: NC Sentencing and Policy Advisory Commission, FY 2009/10 Structured Sentencing Simulation Data

SECTION 2. This bill amends G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician, by reclassifying several existing offenses.

G.S. 14-34.6(a) is amended to reclassify the existing Class A1 misdemeanor as a Class I felony. The amendment provides that it shall be a Class I felony for any person to commit an assault or affray on an emergency medical technician, a medical responder, an emergency department nurse or doctor, or a firefighter while that person is discharging or attempting to discharge his official duties. Currently, it is a Class A1 misdemeanor to commit such an offense. In FY 2009/10, there were 33 convictions under G.S. 14-34.6(a).

The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009/10, 17% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. Using threshold data, if the 33 convictions for this offense were reclassified from a Class A1 misdemeanor to a Class I felony, this would result in the need for three additional prison beds the first year and eleven additional prison beds the second year.

G.S. 14-34.6(b) is amended by reclassifying the existing Class I felony as a Class H felony. The amendment provides that, unless the conduct is covered by some other provision of law providing for greater punishment, it shall be a Class H felony for any person to violate G.S. 14-34.6(a) if, in violation of that section he inflicts serious bodily injury or uses a deadly weapon other than a firearm. Currently, it is a Class I felony to commit such an offense. In FY 2009/10, there were no convictions under G.S. 14-34.6(b).

Impact on the prison population will occur if Class I convictions become Class H convictions under the proposed statute because of the higher rate of active sentences (36% for Class H compared to 17% for Class I) and longer average estimated time served (11 months compared to 7 months for Class I). If, for example, there were 10 Class I felony convictions that were reclassified as Class H felony convictions, this would result in the need for two additional prison beds the first year and four additional prison beds the second year.

SECTION 3. This bill amends G.S. 14-288.9, Assault on emergency personnel; punishments, by reclassifying an existing Class 1 misdemeanor as a Class I felony. G.S. 14-288.9(c) is amended to provide that any person who commits an assault upon emergency personnel in the area of a declared state of emergency or within the immediate vicinity of an occurring or imminent riot is guilty of a Class I felony. Currently, it is a Class 1 misdemeanor to commit such an offense. In FY 2009/10, there were three convictions under 14-288.9(c).

The Structured Sentencing Simulation Model typically cannot be used to project the impact of misdemeanor to felony reclassifications. In FY 2009/10, 17% of Class I felony convictions resulted in active sentences, with an average estimated time served of 7 months. Using threshold data, if the three Class 1 misdemeanor convictions were reclassified from a Class 1 misdemeanor to Class I felony, this would result in the need for one additional prison bed the first year and one additional prison bed the second year.

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 772 – Consolidate Ethics, Elections, and Lobbying [Ed.1]

STATUTE

§ 163A-210. Enforcement.

DESCRIPTION

Subsection (7):

A person who

1. willfully violates
2. any provision of Article 3 or 4 of Chapter 163A (State Elections and Ethics Act) of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

This bill recodifies Article 2 (Registration) of current Chapter 120C (Lobbying) of the General Statutes as Article 3 of proposed Chapter 163A (State Elections and Ethics Act). Currently, Article 2 of Chapter 120C provides for the rules and regulations of lobbyist registration.

This bill also recodifies Article 3 (Prohibitions and Restrictions) of current Chapter 120C (Lobbying) of the General Statutes as Article 4 of proposed Chapter 163A (State Elections and Ethics Act). Currently, Article 3 of Chapter 120C provides for prohibitions and restrictions on lobbyist, particularly regarding gifts and payments made to and by lobbyists.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

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 775 – Regulate Abortion Facilities [Ed.1]

STATUTE

§ 131E-154.28. Penalty.

DESCRIPTION

A person who

1. operates, establishes, or maintains
2. an abortion facility
3. without a license
4. issued pursuant to Part 6A (Abortion Facility Licensure Act) of Article 6 (Health Care Facility Licensure) of Chapter 131E (Health Care Facilities and Services) of the General Statutes.

PROPOSED OFFENSE CLASS

Class 1 misdemeanor.

Fine of up to \$10,000.

ANALYSIS

The Sentencing Commission recommended classifying offenses which reasonably tend to result or do result in significant injury to person, serious injury to property, or serious injury to society as Class 1 misdemeanors.

Each day of a continuing violation after conviction shall be considered a separate offense.

G.S. 131E-154.22, Licensure requirements, provides the guidelines for issuing and denying abortion facility licenses.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/03/11

IMPACT ANALYSIS NOT REQUESTED YET