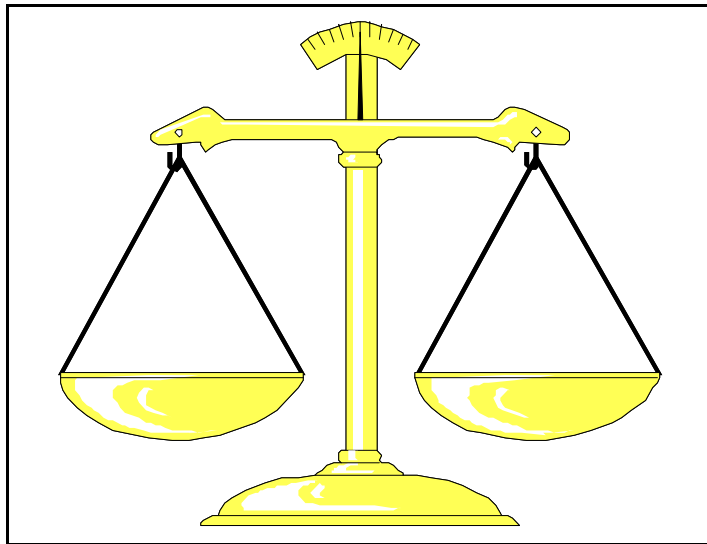


**NORTH CAROLINA
SENTENCING
AND
POLICY ADVISORY
COMMISSION**



***REPORT #1 ON PROPOSED LEGISLATION
PURSUANT TO N.C.G.S. 164-43***

***SUBMITTED TO THE 2014 SESSION OF THE
NORTH CAROLINA GENERAL ASSEMBLY
JUNE 2014***

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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 13, 2014. 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 July 1, 2014.

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

The bills included in this report were reviewed by the North Carolina Sentencing and Policy Advisory Commission on June 13, 2014.

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

THE OFFENSE CLASSIFICATION CRITERIA

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

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

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

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

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

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

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • 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.

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

CLASS CRITERIA

(FELONY)

- A** • Intentional killing with premeditation and deliberation or a legally recognized substitute for premeditation and deliberation.
- B** • Intentional killing with malice.
- D** • Intentional killing with a partial legal excuse.
- E** • Unintentional killing by criminal or culpable negligence with aggravating circumstances.
- F** • Unintentional killing by criminal or culpable negligence.
- H** • Unintentional killing by motor vehicle involving a serious traffic violation.

(MISDEMEANOR)

- A1** • Unintentional killing by motor vehicle involving a traffic violation.

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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 744 – Appropriations Act of 2014 [Ed.3]

STATUTE

§ 14-269. Carrying concealed weapons.

DESCRIPTION

Subsection (c):

A person who

1. violates G.S. 14-269(a1).

OFFENSE CLASS

CURRENT: Class I felony (second or subsequent offense).

PROPOSED: Class H felony (second or subsequent offense).

ANALYSIS

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

The 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. 14-269(a1) provides that it shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except when the person is on his own premises; the weapon is a handgun, the person has a concealed handgun permit and the person is carrying the concealed handgun in accordance with the scope of the concealed handgun permit; or the weapon is a handgun and the person is a military permittee with proof of deployment; first offense is a Class A1 misdemeanor.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

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: 06/13/14

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 819/HB 1169 – Update/Modernize Midwifery Practice Act
[Ed.1]

STATUTE

§ 90-18.7. Limitations on nurse-midwives.

DESCRIPTION

Subsection (a):

A person who

1. a. uses the title “certified nurse-midwife” in any form, or
b. holds himself out to be a certified nurse-midwife or so approved
2. without being approved under the provisions of Article 10A of Chapter 90 of the General Statutes
3. and falsely represents himself in a manner as being licensed or registered.

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.

This offense is a violation of Article 1 of Chapter 90, the Practice of Medicine, pursuant to G.S. 90-18, which provides that any person practicing [a specified form of medicine] without being duly licensed and registered in this State and who is falsely representing himself or herself in a manner as being licensed or registered under this Article or any Article of this Chapter shall be guilty of a Class I felony.

G.S. 90-18(a) also provides that that any person practicing without being duly licensed and registered in this State shall be guilty of a Class 1 misdemeanor; any person so practicing without being duly licensed and registered in this State and who is an out-of-state practitioner shall be guilty of a Class I felony; and any person who has a license or approval under this Article that is inactive due solely to the failure to complete annual registration in a timely fashion as required by this Article or any person who is licensed, registered, and practicing under any other Article of this Chapter shall be guilty of a Class 1 misdemeanor.

Article 10A of Chapter 90 is entitled, “Practice of Midwifery;” Chapter 90 regulates “Medicine and Allied Occupations.”

Currently, it is a Class 3 misdemeanor to practice or offer to practice or hold oneself out to practice midwifery unless approved pursuant to Article 10A.

FINDINGS

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

DATE OF REVIEW: 06/13/2014

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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 819/HB 1169 – Update/Modernize Midwifery Practice Act
[Ed.1] (cont'd)

STATUTE

§ 90-18.7. Limitations on nurse-midwives.

DESCRIPTION

Subsection (a):

A person who

1. is an out-of-state practitioner, and
2. a. uses the title “certified nurse-midwife” in any form, or
b. holds himself out to be a certified nurse-midwife or so approved
3. without being approved under the provisions of Article 10A of Chapter 90 of the General Statutes.

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.

This offense is a violation of Article 1 of Chapter 90, the Practice of Medicine, pursuant to G.S. 90-18(a), which provides that any person practicing [a specified form of medicine] without being duly licensed and registered in this State and who is an out-of-state practitioner shall be guilty of a Class I felony.

G.S. 90-18(a) also provides that that any person practicing without being duly licensed and registered in this State shall be guilty of a Class 1 misdemeanor; that any person practicing without being duly licensed and registered in this State and who is falsely representing himself or herself in a manner as being licensed or registered under this Article or any Article of this Chapter shall be guilty of a Class I felony; and that any person who has a license or approval under this Article that is inactive due solely to the failure to complete annual registration in a timely fashion as required by this Article or any person who is licensed, registered, and practicing under any other Article of this Chapter shall be guilty of a Class 1 misdemeanor.

Article 10A of Chapter 90 is entitled, “Practice of Midwifery;” Chapter 90 regulates “Medicine and Allied Occupations.”

Currently, it is a Class 3 misdemeanor to practice or offer to practice or hold oneself out to practice midwifery unless approved pursuant to Article 10A.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/13/2014

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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 819/HB 1169 – Update/Modernize Midwifery Practice Act
[Ed.1] (cont'd)

STATUTE

§ 90-178.7. Enforcement.

DESCRIPTION

Subsection (b):

A person who

1. performs any act
2. constituting the practice of midwifery
3. without being duly approved under Article 10A of Chapter 90 of the General Statutes
4. and falsely represents himself in a manner as being approved under Article 10A or any Article under Chapter 90.

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.

Article 10A of Chapter 90 is entitled, “Practice of Midwifery;” Chapter 90 regulates “Medicine and Allied Occupations.”

Currently, G.S. 90-178.7(b) provides it is a Class 3 misdemeanor to violate 90-178.3(a). G.S. 90-178.3(a) provides that no person shall practice or offer to practice or hold oneself out to practice midwifery unless approved pursuant to Article 10A. Amended G.S. 90-178.7(b) provides that it shall be a Class 3 misdemeanor for any person to practice midwifery without being duly approved and registered, as provided in Article 10A.

FINDINGS

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

DATE OF REVIEW: 06/13/2014

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 842 – Governor’s Budget [Ed.1]

STATUTE

§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (d):

A person who

1. knowingly
2. gives or sells
3. a mobile telephone or other wireless communication device, or a component of such device
4. a. to an inmate in the custody of the Division of Adult Correction of the Department of Public Safety, or
b. to an inmate in the custody of a local confinement facility, or
c. to a person who is not an inmate, for delivery to an inmate.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor

PROPOSED: Class F felony.

ANALYSIS

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

The Sentencing Commission 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. 14-258.1(a) provides that it is a Class H felony to give/transfer to an inmate a deadly weapon or any controlled substances or poisons, except upon prescription of a physician.

G.S. 14-258.1(b) & (c) provide that it is a Class 1 misdemeanor for any person to provide alcohol or tobacco products to an inmate.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco products or mobile phones to inmates.

DESCRIPTION

Subsection (e):

A person who

1. is an inmate in the custody of the Division of Adult Correction of the Department of Public Safety, or
2. an inmate of a local confinement facility
3. who possesses
4. a mobile telephone or other wireless communication device or a component of such device.

OFFENSE CLASS

CURRENT: Class 1 misdemeanor.

PROPOSED: Class F felony.

ANALYSIS

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

The Sentencing Commission 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.

Currently, G.S. 14-258.1(e) applies only to inmates at local confinement facilities, and further provides that that it shall be a Class 1 misdemeanor for any inmate of a local confinement facility to possess any tobacco product other than for authorized religious purposes; the tobacco product provision is left unchanged by this bill.

Pursuant to G.S. 14-258.2(a) it is a Class H felony for a person in the custody of DAC or a local confinement facility to possess a weapon capable of inflicting bodily injury.

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: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

A person who

1. assaults any legislative officer, executive officer, or court officer, or
2. makes a violent attack upon the residence, office, temporary accommodation or means of transport of any such officer in a manner likely to endanger the officer.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class E felony.

ANALYSIS

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

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

G.S. 14-33, it is a Class A1 misdemeanor to commit any assault, assault and battery, or affray against an officer or employee of the State or any political subdivision of the State.

G.S. 14-34.6, it is a Class I felony to commit an assault or affray causing physical injury on EMTs, medical responders, emergency department personnel or firefighters.

G.S. 14-32(b), assault with a deadly weapon inflicting serious injury is a Class E felony.

G.S. 14-32(c), assault with a deadly weapon with intent to kill is 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.

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

DATE OF REVIEW: 06/13/14

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (a):

A person who

1. assaults another person
2. as retaliation against any legislative officer, executive officer, or court officer
3. because of the exercise of that officer’s duties.

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.

G.S. 14-33, it is a Class A1 misdemeanor to commit any assault, assault and battery, or affray against an officer or employee of the State or any political subdivision of the State.

G.S. 14-34.6, it is a Class I felony to commit an assault or affray causing physical injury on EMTs, medical responders, emergency department personnel or firefighters.

G.S. 14-32(b), assault with a deadly weapon inflicting serious injury is a Class E felony.

G.S. 14-32(c), assault with a deadly weapon with intent to kill is 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.

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

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (b):

A person who

1. using a deadly weapon,
2. assaults any legislative officer, executive officer, or court officer, or
3. makes a violent attack upon the residence, office, temporary accommodation or means of transport of any such officer in a manner likely to endanger the officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: 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.

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

G.S. 14-32(c), assault with a deadly weapon with intent to kill is a Class E felony.

G.S. 14-33, assault with a deadly weapon is a Class A1 misdemeanor.

G.S. 14-34.2, assault with a firearm or deadly weapon upon an officer or employee of the State, a company police officer, or a campus police officer is a Class F felony.

G.S. 14-34.5, assault with a firearm upon a law enforcement officer, probation or parole officer, or detention center employee is a Class E felony.

G.S. 14-34.6, Assault on an EMT, emergency department personnel, or a firefighter using a deadly weapon is a Class H felony; using a firearm is 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.

DATE OF REVIEW: 06/13/14

BILL CONTINUED ON NEXT PAGE

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (b):

A person who

1. using a deadly weapon,
2. assaults another person
3. as retaliation against any legislative officer, executive officer, or court officer
4. because of the exercise of that officer’s duties.

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.

G.S. 14-32(c), assault with a deadly weapon with intent to kill is a Class E felony.

G.S. 14-33, assault with a deadly weapon is a Class A1 misdemeanor.

G.S. 14-34.2, assault with a firearm or deadly weapon upon an officer or employee of the State, a company police officer, or a campus police officer is a Class F felony.

G.S. 14-34.5, assault with a firearm upon a law enforcement officer, probation or parole officer, or detention center employee is a Class E felony.

G.S. 14-34.6, Assault on an EMT, emergency department personnel, or a firefighter using a deadly weapon is a Class H felony; using a firearm is 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.

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (c):

A person who

1. assaults any legislative officer, executive officer, or court officer, or
2. makes a violent attack upon the residence, office, temporary accommodation or means of transport of any such officer in a manner likely to endanger the officer
3. and in so doing inflicts serious bodily injury to such officer.

OFFENSE CLASS

CURRENT: Class F felony.

PROPOSED: 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.

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

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

G.S. 14-34.6, Assault on an EMT, emergency department personnel, or a firefighter inflicting serious bodily injury is a Class H felony.

G.S. 14-34.7, Assault inflicting serious bodily injury on a law enforcement officer, probation or parole officer, or a detention center employee is a Class F felony; assault inflicting physical injury on the same is a Class I felony.

G.S. 14-32(a), Assault with a deadly weapon with intent to kill and inflicting serious injury is 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.

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

DATE OF REVIEW: 06/13/14

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

BILL NUMBER/SHORT TITLE: SB 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.6. Assault on executive, legislative, or court officer.

DESCRIPTION

Subsection (c):

A person who

1. assaults another person
2. as retaliation against any legislative officer, executive officer, or court officer
3. because of the exercise of that officer’s duties, and
4. in so doing inflicts serious bodily injury to such 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.

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

G.S. 14-34.6, Assault on an EMT, emergency department personnel, or a firefighter inflicting serious bodily injury is a Class H felony.

G.S. 14-34.7, Assault inflicting serious bodily injury on a law enforcement officer, probation or parole officer, or a detention center employee is a Class F felony; assault inflicting physical injury on the same is a Class I felony.

G.S. 14-32(a), Assault with a deadly weapon with intent to kill and inflicting serious injury is 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.

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

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.7. Threats against executive, legislative, or court officers.

DESCRIPTION

Subsection (a):

A person who

1. knowingly and willfully
2. makes any threat
3. to inflict serious bodily injury upon or to kill
4. any legislative officer, executive officer, or court officer.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class F felony.

ANALYSIS

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

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

G.S. 14-277.1, communicating a threat, orally or in writing, against another, his children, siblings, spouse, dependent, or property, 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.

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

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.7. Threats against executive, legislative, or court officers.

DESCRIPTION

Subsection (a):

A person who

1. knowingly and willfully
2. makes any threat
3. to inflict serious bodily injury upon or to kill
4. another person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer’s duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

G.S. 14-16.7 provides that it is a Class I felony to knowingly and willfully make a threat to inflict serious bodily injury upon or to kill any legislative officer, executive officer, or court officer.

G.S. 14-277.1, communicating a threat, orally or in writing, against another, his children, siblings, spouse, dependent, or property, 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.

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

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.7. Threats against executive, legislative, or court officers.

DESCRIPTION

Subsection (b):

A person who

1. knowingly and willfully
2. deposits for conveyance in the mail
3. any letter, writing, or other document
4. containing a threat
5. to inflict serious bodily injury upon or kill
6. any legislative officer, executive officer, or court officer.

OFFENSE CLASS

CURRENT: Class I felony.

PROPOSED: Class F felony.

ANALYSIS

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

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

G.S. 14-277.1, communicating a threat, orally or in writing, against another, his children, siblings, spouse, dependent, or property, 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.

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

DATE OF REVIEW: 06/13/14

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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 842 – Governor’s Budget [Ed.1] (cont’d)

STATUTE

§ 14-16.7. Threats against executive, legislative, or court officers.

DESCRIPTION

Subsection (b):

A person who

1. knowingly and willfully
2. deposits for conveyance in the mail
3. any letter, writing, or other document
4. containing a threat
5. to inflict serious bodily injury upon or kill
6. a person as retaliation against any legislative officer, executive officer, or court officer because of the exercise of that officer’s duties.

PROPOSED OFFENSE CLASS

Class F felony.

ANALYSIS

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

G.S. 14-16.7 provides that it is a Class I felony to knowingly and willfully make a threat to inflict serious bodily injury upon or to kill any legislative officer, executive officer, or court officer.

G.S. 14-277.1, communicating a threat, orally or in writing, against another, his children, siblings, spouse, dependent, or property, 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.

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

DATE OF REVIEW: 06/13/14

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 1059 – Venus Flytrap Taking Penalty/Occup. Tax Use. [Ed.2]

STATUTE

(Session Law 2014-TBD) An act to make the larceny of Venus flytraps in New Hanover, Brunswick, Onslow, and Pender counties a felony offense and to modify the New Hanover Occupancy Tax.

DESCRIPTION

A person who

1. takes and carries away, or aids in taking or carrying away
2. any Venus flytrap plant or the seed of any Venus flytrap plant
3. growing upon the lands of another person
4. with the intent to steal the Venus flytrap plant or seed.

PROPOSED OFFENSE CLASS

Class H felony. This provision only applies to New Hanover, Brunswick, Onslow, and Pender counties.

ANALYSIS

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

The taking of certain wild plants from land of another, including the Venus flytrap, without having in his possession a permit signed by the owner of such land to do such, is a Class 3 misdemeanor in certain counties, including New Hanover. (G.S. 14-129). G.S. 14-129 would be amended to include language reflecting the misdemeanor punishment is not applicable if the conduct is covered under some other provision of the law that provides greater punishment.

The larceny of ungathered crops is a Class H Felony. (G.S. 14-78)

The larceny of ginseng is a Class H Felony. (G.S. 14-79)

The larceny of pine needles or pine straw is a Class H Felony. (G.S. 14-79.1)

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 6/13/14

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 1099 – Unmanned Aircraft Regulation [Ed.1]

STATUTE

§ 14-280.3. Interference with manned aircraft by unmanned aircraft systems.

DESCRIPTION

A person who

1. a. willfully damages,
b. disrupts the operation of, or
c. otherwise interferes with a manned aircraft
2. through use of an unmanned aircraft system
3. while the manned aircraft is
 - a. taking off,
 - b. landing,
 - c. in flight, or
 - d. otherwise in motion.

PROPOSED OFFENSE CLASS

Class H Felony.

ANALYSIS

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

The unauthorized use of a motor-propelled conveyance, such as an aircraft, is a Class H felony. (G.S. 14-72.2).

The use of a laser device towards an aircraft, while the aircraft is in use, is a Class H felony. (G.S. 14-280.2).

FINDINGS

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

DATE OF REVIEW: 6/13/14

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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 1099 – Unmanned Aircraft Regulation [Ed.1] (cont'd)

STATUTE

§14-401.24. Unlawful possession and use of unmanned aircraft systems.

DESCRIPTION

A person who

1. a. possesses or
b. uses
2. an unmanned aircraft or aircraft system
3. that has a weapon attached.

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.

This statute does not prohibit conduct that is authorized by federal law or regulation.

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: 6/13/14

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

HB 1099: UNMANNED AIRCRAFT REGULATION

PREPARED: May 30, 2014

ADDITIONAL PRISON POPULATION ABOVE THAT PROJECTED UNDER STRUCTURED SENTENCING

This bill creates two new felony offenses and two new misdemeanor offenses.

SECTION 3. This Section enacts G.S. 14-280.3. Interference with manned aircraft by unmanned aircraft systems. Subsection (a) of this statute makes it a Class H felony for a person to willfully damage, disrupt, or interfere with a manned aircraft through the use of an unmanned aircraft system while the manned aircraft is in motion.

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 proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2012/13, 35% of Class H convictions resulted in active sentences, with an average estimated time served of 10 months. If, for example, there were four Class H convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

SECTION 4. This Section enacts G.S. 14-401.24. Unlawful possession and use of unmanned aircraft systems.

Subsection (a) of this statute makes it a Class I felony to possess or use an unmanned aircraft or aircraft system that has a weapon attached.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2012/13, 16% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were nine Class I convictions for this proposed offense per year, the combination of active sentences and probation and post-release supervision violations resulting in confinement would result in the need for one additional prison bed the first year and two additional prison beds the second year. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation.

Subsection (b) of this statute makes it a Class 3 misdemeanor for any person to use an unmanned aircraft system while hunting or fishing.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison

population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2012/13, 32% of Class 3 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 3 convictions was 8 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Subsection (d) of this statute provides that the possession or usage of the unmanned aircraft or system is not prohibited if such possession or usage is authorized by federal law or regulation.

These Sections are effective December 1, 2014 and apply to offenses committed on or after that date.

SECTION 5.(a). This Section enacts G.S. 63-96. License required for commercial operation of unmanned aircraft systems. Subsection (e) of this statute makes the first offense an infraction and a Class 3 misdemeanor for a second or subsequent offense of operating an unmanned aircraft system for commercial purposes without a license issued by the Division of Aviation of the Department of Transportation.

First Offense: Subsection (e) of this statute makes the first offense under this subsection an infraction. The North Carolina Sentencing and Policy Advisory Commission does not maintain data on infractions. However, infractions are punishable only by a fine and, therefore, do not have an impact on prison or jail populations.

Second or Subsequent Offense: Since the proposed Subsection (e) creates a new misdemeanor offense for second or subsequent violations of G.S. 63-96, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense for second or subsequent violations. In FY 2012/13, 32% of Class 3 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 3 convictions was 8 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in either the Statewide Misdemeanant Confinement Program (91-180 days) or in county jails (90 days or less). Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

This Section is effective when the Act becomes law (assume July 1, 2014).