

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

## REPORT #1

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## NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

### REPORT ON PROPOSED LEGISLATION PURSUANT TO G.S. 164-43

This report by the Sentencing Commission includes all bills introduced or amended through March 3, 2023. 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, 2023.

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

The bills included in this report were reviewed by the Sentencing Commission on March 3, 2023.

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

## THE OFFENSE CLASSIFICATION CRITERIA

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

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

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

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

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

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

## FELONY OFFENSE CLASSIFICATION CRITERIA\*

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

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\* Personal injury includes both physical and mental injury.

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

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

## HOMICIDE OFFENSE CLASSIFICATION CRITERIA

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**  
**REPORT #1 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS**  
**March 3, 2023**

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 34	Protect Those Who Serve and Protect Act [Ed. 2]	G.S. 14-34.1A	Class H	Consistent		<a href="#">1</a>
		G.S. 14-34.8(b)(1)	Class I	Consistent		<a href="#">2</a>
HB 40	Prevent Rioting and Civil Disorder [Ed. 2]	G.S. 14-288.2(c1)	Class F	Inconsistent	Would be consistent if limited to serious bodily injury.	<a href="#">3</a>
		G.S. 14-288.2(c2)	Class F	Consistent		<a href="#">5</a>
		G.S. 14-288.2(e)	Class E	Inconsistent		<a href="#">6</a>
		G.S. 14-288.2(e1)	Class D	Inconsistent	Would be consistent with a Class E felony.	<a href="#">8</a>
		G.S. 14-288.9(c)	Class H	Consistent		<a href="#">9</a>
		G.S. 14-288.9(e)	Class E	Consistent		<a href="#">11</a>
		G.S. 14-288.9(f)	Class D	Consistent	Would be consistent with a Class B felony if it included the element of malice.	<a href="#">12</a>
HB 142	Protect our Students Act [Ed. 2]	G.S. 14-27.32(b)	Class G	Inconsistent	Would be consistent with a Class H or Class F felony.	<a href="#">13</a>
		G.S. 14-202.4(a)	Class G	Inconsistent		<a href="#">14</a>
		G.S. 14-202.4(b)	Class G	Inconsistent		<a href="#">15</a>
		G.S. 115C-326.20	Class I	Consistent		<a href="#">16</a>



Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 189	NC Constitutional Carry Act [Ed. 1]	G.S. 14-415.35	Class H	Inconsistent	The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">17</a>
HB 199	DMV Proposed Legislative Changes [Ed. 1]	G.S. 20-111(2)	Class I	Inconsistent		<a href="#">18</a>
		G.S. 20-111(6)	Class I	Inconsistent		<a href="#">19</a>
HB 237	Criminal Law Revisions [Ed. 1]	G.S. 14-118.8(f)(1)	Class H	Consistent		<a href="#">20</a>
		G.S. 14-118.8(f)(2)	Class C	Consistent		<a href="#">21</a>
		G.S. 15A-1340.16F	One class higher	Inconsistent	Would be consistent as an aggravating factor.	<a href="#">22</a>
HB 249	January 6 Riot/Attempt Overthrow of Gov't [Ed. 1]	G.S. 14-288.2(c1)	Class F	Consistent		<a href="#">23</a>
		G.S. 14-288.2(f)	Class F	Consistent		<a href="#">24</a>
HB 250	Death by Distribution Revisions [Ed. 1]	G.S. 14-18.4(a1)	Class C	Inconsistent	Would be consistent with a Class E or Class B felony.	<a href="#">25</a>
		G.S. 14-18.4(a2)	Class B2	Consistent		<a href="#">26</a>
		G.S. 14-18.4(b)	Class B2	Inconsistent	Would be consistent with a Class B felony if it included the element of malice; would also be consistent with a Class C felony.	<a href="#">27</a>
		G.S. 14-18.4(c)	Class B1	Consistent		<a href="#">28</a>
SB 3	NC Compassionate Care Act [Ed. 3]	G.S. 90-113.121(a)	G	Inconsistent		<a href="#">29</a>
		G.S. 90-113.121(b)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">30</a>
		G.S. 90-113.121(d)	H	Inconsistent	Would be consistent with a Class I felony.	<a href="#">31</a>

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 90-113.121(f)	I	Inconsistent		<a href="#">32</a>
		G.S. 90-113.121(g)	One class higher plus 12 months	Inconsistent		<a href="#">33</a>
SB 58	Protect Critical Infrastructure [Ed. 2]	G.S. 14-150.2(b)	Class C	Consistent		<a href="#">35</a>
		G.S. 14-150.2(c)	Class B2	Consistent		<a href="#">37</a>
		G.S. 14-159.12(c)(1)	Class I	Consistent		<a href="#">38</a>
		G.S. 14-159.12(d)	Class G	Inconsistent	Would be consistent with a Class F felony when it results in serious bodily injury.	<a href="#">40</a>
		G.S. 14-154	Class C	Consistent	Would also be consistent with a Class F or Class H felony.	<a href="#">41</a>
		G.S. 14-323	Class C	Consistent		<a href="#">42</a>
SB 189	Fentanyl Drug Offenses/Increase Punishment [Ed. 1]	G.S. 14-18.4(a1)	Class C	Inconsistent	Would be consistent with a Class E or Class B felony.	<a href="#">25</a>
		G.S. 14-18.4(a2)	Class B2	Consistent		<a href="#">26</a>
		G.S. 14-18.4(b)	Class B2	Inconsistent	Would be consistent with a Class B felony if it included the element of malice; would also be consistent with a Class C felony.	<a href="#">27</a>
		G.S. 14-18.4(c)	Class B1	Consistent		<a href="#">28</a>

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 34 – Protect Those Who Serve and Protect Act [Ed. 2]

**STATUTE**

§ 14-34.1A. Discharging certain barreled weapons or a firearm at or into certain unoccupied emergency vehicles.

**DESCRIPTION**

A person who

1. willfully or wantonly
2. discharges or attempts to discharge
3. any firearm or barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second
4. at or into any unoccupied emergency vehicle.

**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, or in significant societal injury as Class H felonies.

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit (G.S. 14-2.5).

Discharging certain barreled weapons or a firearm into occupied property is a Class E felony. G.S. 14-34.1(a) "Property" includes a vehicle.

**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:** 03/03/2023

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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 34 – Protect Those Who Serve and Protect Act [Ed. 2] (cont'd)

**STATUTE**

§ 14-34.8. Criminal use of laser device.

**DESCRIPTION**

Subdivision (b)(1):

A person who

1. intentionally
2. points a laser device while the device is emitting a laser beam
3. at any of the following while the person is in the performance of his or her duties:
  - a. A law enforcement officer.
  - b. A probation or parole officer.
  - c. A person whose employment duties include the custody, transportation, or management of persons who are detained or confined to a detention facility, youth development center, or correctional institution operated under the jurisdiction of the State or a local government.
  - d. A firefighter.
  - e. An emergency medical technician or other emergency health care provider.
  - f. A member of the North Carolina National Guard.
  - g. A member of any branch of the Armed Forces of the United States.
  - h. Court counselors whose employment duties include intake, probation, post-release supervision, and court supervision services of juveniles.

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

It is currently an infraction to intentionally point a laser device at a law enforcement officer, or at the head or face of another person, while the device is emitting a laser beam. (G.S. 14-34.8)

- It remains an infraction to intentionally point a laser device at the head or face of another person while the device is emitting a laser beam.
- It becomes a Class A1 misdemeanor to intentionally point a laser device at a law enforcement agency animal or a search and rescue animal while the animal is in the performance of its duty and the device is emitting a laser beam.

**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:** 03/03/2023

**IMPACT ANALYSIS NOT REQUESTED YET**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 40 – Prevent Rioting and Civil Disorder [Ed. 2]

**STATUTE**

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

**DESCRIPTION**

Subsection (c1):

A person who

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

**OFFENSE CLASS**

**CURRENT:** Class H felony.

**PROPOSED:** Class F felony.

**ANALYSIS**

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

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

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

Engaging in a riot is a Class 1 misdemeanor. (G.S. 14-288.2(b))

Engaging in a riot and brandishing any dangerous weapon or using a dangerous substance is a Class H felony. (G.S. 14-288.2(c))

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

Injury to personal property is a Class 1 (more than \$200) or Class 2 misdemeanor (\$200 or less). (G.S. 14-160)

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

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

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

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The Sentencing Commission reviewed a substantially similar provision in May 2021 in HB 805, and found it inconsistent with the Offense Classification Criteria for a Class F felony because the offense can result in property loss, which is not included in the Offense Classification Criteria for a Class F felony.

**FINDINGS**

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

The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies. While this offense can result in serious bodily injury, it can also result in property loss, which is not included in the Offense Classification Criteria for a Class F felony.

**DATE OF REVIEW:** 03/03/2023

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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 40 – Prevent Rioting and Civil Disorder [Ed. 2] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (c2):

A person who

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

**PROPOSED OFFENSE CLASS**

Class E felony.

**ANALYSIS**

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

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

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

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

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

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

The Sentencing Commission reviewed a substantially similar provision in May 2021 in HB 805, and found it consistent with the Homicide Offense Classification Criteria for a Class E felony.

**FINDINGS**

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

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

Homicide Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 03/03/2023

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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 40 – Prevent Rioting and Civil Disorder [Ed. 2] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (e):

A person who

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

**OFFENSE CLASS**

**CURRENT:** Class F felony.

**PROPOSED:** Class E felony.

**ANALYSIS**

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

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

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

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

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

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

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

The Sentencing Commission reviewed a substantially similar provision in May 2021 in HB 805, and found it inconsistent with the Offense Classification Criteria for a Class E felony.



## FINDINGS

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 03/03/2023

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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 40 – Prevent Rioting and Civil Disorder [Ed. 2] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (e1):

A person who

1. willfully
2. incites or urges another to engage in a riot (as defined in subsection (a)), and
3. such inciting or urging causes a death.

**PROPOSED OFFENSE CLASS**

Class D felony.

**ANALYSIS**

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

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

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

The Sentencing Commission reviewed a substantially similar provision in May 2021 in HB 805, and found it inconsistent with the Homicide Offense Classification Criteria for a Class D felony but noted that this offense would be consistent the Homicide Offense Classification Criteria for a Class E felony.

**FINDINGS**

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

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

Homicide Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 03/03/2023

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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 40 – Prevent Rioting and Civil Disorder [Ed. 2] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (c):

A person who

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

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

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

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

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

Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel is a Class I felony unless the assault inflicts serious bodily injury or uses a deadly weapon other than a firearm, in which case it is a Class G felony, or unless the person uses a firearm, in which case it is a Class E felony. (G.S. 14-34.6)

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The Sentencing Commission reviewed a substantially similar provision in May 2021 in HB 805, and found it inconsistent with the Offense Classification Criteria for a Class H felony.

**FINDINGS**

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

**DATE OF REVIEW:** 03/03/2023

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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 40 – Prevent Rioting and Civil Disorder [Ed. 2] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (e):

A person who

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

**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.

The term "emergency personnel" includes law-enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, members of the North Carolina National Guard, and other persons lawfully engaged in providing essential services or otherwise discharging or attempting to discharge his or her official duties during the emergency. (G.S. 14-288.9(b))

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

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

Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel inflicting serious bodily injury or using a deadly weapon other than a firearm is a Class G felony. (G.S. 14-34.6)

**FINDINGS**

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

**DATE OF REVIEW:** 03/03/2023

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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 40 – Prevent Rioting and Civil Disorder [Ed. 2] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (f):

A person who

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

**PROPOSED OFFENSE CLASS**

Class D felony.

**ANALYSIS**

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

The term "emergency personnel" includes law-enforcement officers, firemen, ambulance attendants, utility workers, doctors, nurses, members of the North Carolina National Guard, and other persons lawfully engaged in providing essential services or otherwise discharging or attempting to discharge his or her official duties during the emergency. (G.S. 14-288.9(b))

Voluntary manslaughter is a Class D felony. (G.S. 14-18)

**FINDINGS**

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

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

Homicide Offense Classification Criteria are not applicable.

This offense would also be consistent with the Homicide Offense Classification Criteria for a Class B felony if it included the element of malice.

**DATE OF REVIEW:** 03/03/2023

**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 142 – Protect Our Students Act [Ed. 2]

**STATUTE**

§ 14-27.32. Sexual activity with a student.

**DESCRIPTION**

Subsection (b):

A person who

1. a. is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and  
b. is less than four years older than the victim
2. engages in vaginal intercourse or a sexual act
3. with a victim who is a student.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

"Student" is defined as a person enrolled in kindergarten, or in grade one through grade 12 in any school within six months of any violation of this section. (G.S. 14-27.34(e)(4))

Sexual activity with a student (teacher, etc., at any age, or other school personnel who is at least 4 years older than the victim) is a Class G felony. (G.S. 14-27.32(a))

Taking indecent liberties with a student (other school personnel who is less than 4 years older than the victim) is a Class I felony, but this bill would raise the offense classification to a Class G felony. (G.S. 14-202.4(b)).

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 03/03/2023

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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 142 – Protect Our Students Act [Ed. 2] (cont’d)

**STATUTE**

§ 14-202.4. Taking indecent liberties with a student.

**DESCRIPTION**

Subsection (a):

A person who

1. a. (i) is a teacher, school administrator, student teacher, school safety officer, or coach,  
(ii) at any age, or
- b. (i) is other school personnel and  
(ii) is at least four years older than the victim,
2. takes indecent liberties
3. with a victim who is a student,
4. at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

“Indecent liberties” is defined as (a) willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or (b) willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student. (G.S. 14-202.4(d)(1))

Sexual activity with a student (teacher, etc., at any age, or other school personnel who is at least 4 years older than the victim) is a Class G felony. (G.S. 14-27.32(a))

Sexual activity with a student (by other school personnel who is less than 4 years older than the victim) is a Class I felony, but this bill would raise the offense classification to a Class G felony. (G.S. 14-27.32(b))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 142 – Protect Our Students Act [Ed. 2] (cont’d)

**STATUTE**

§ 14-202.4. Taking indecent liberties with a student.

**DESCRIPTION**

Subsection (b):

A person who

1. a. is school personnel other than a teacher, school administrator, student teacher, school safety officer, or coach, and  
b. is less than four years older than the victim,
2. takes indecent liberties
3. with a victim who is a student,
4. at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student.

**OFFENSE CLASS**

**CURRENT:** Class I felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

“Indecent liberties” is defined as (a) willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or (b) willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student. (G.S. 14-202.4(d)(1))

Sexual activity with a student (teacher, etc., at any age, or other school personnel who is at least 4 years older than the victim) is a Class G felony. (G.S. 14-27.32(a))

Sexual activity with a student (by other school personnel who is less than 4 years older than the victim) is a Class I felony, but this bill would raise the offense classification to a Class G felony. (G.S. 14-27.32(b))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 03/03/2023

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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 142 – Protect Our Students Act [Ed. 2] (cont’d)

**STATUTE**

§ 115C-326.20. Reporting misconduct of licensed school employees.

**DESCRIPTION**

A person who

1. is a superintendent, assistant superintendent, associate superintendent, personnel administrator, or principal
2. knows or has reason to believe that an employee licensed under Article 17E of Chapter 115C has engaged in misconduct resulting in dismissal, disciplinary action, or resignation
3. fails to report the misconduct to the State Board of Education within five days of dismissal, determination of disciplinary action, or acceptance of resignation.

**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.

Failure to report the disappearance of a child to law enforcement (parent or person providing care/supervision) is a Class I felony. (G.S. 14-318.5(b))

Failure to report the disappearance of a child to law enforcement (reasonable suspicion regarding disappearance or danger to child) is a Class 1 misdemeanor. (G.S. 14-318.5(c))

Involuntary servitude (failure of party to a labor contract to report violation) is a Class 1 misdemeanor. (G.S. 14-43.12(e))

Failure to report crimes (violent offense, sexual offense, or misdemeanor child abuse) against juveniles (person 18 or older knows or has reasonable suspicion) is a Class 1 misdemeanor. (G.S. 14-318.6(c))

Duty to report insurer impairment (CEO to report to Insurance Commissioner) is a Class 1 misdemeanor. (G.S. 58-30-12(b))

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 03/03/2023

**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)**

<b>BILL NUMBER/SHORT TITLE:</b> HB 189 – NC Constitutional Carry Act. [Ed. 1]
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**STATUTE**

§ 14-415.35. Carrying concealed handguns.

**DESCRIPTION**

Subsection (b):

A person who

1. carries a concealed handgun and
2. meets any of the criteria listed in G.S. 14-415.35(b).

**PROPOSED OFFENSE CLASS**

Class H felony, second and subsequent offenses.

**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 loss occasioned by breach of trust, formal or informal, personal injury, or significant societal injury as Class H felonies.

Proposed G.S. 14-415.35(b) provides that it shall be unlawful for a person to carry a concealed handgun when he meets any one of a list of certain criteria. That list includes but is not limited to: persons under indictment for a felony; persons adjudicated guilty of a felony unless that offense pertains to antitrust violations, unfair trade practices, or restraints of trade, or his firearms rights have been restored; fugitives from justice; drug addicts; persons dishonorably discharged from the military; and persons convicted of impaired driving offenses within last three years.

A first violation of this provision is a Class 2 misdemeanor.

The Sentencing Commission reviewed a substantially similar provision in April 2017 in HB 201, March 2019 in HB 61, April 2019 in HB 498, and March 2021 in HB 197, and found each inconsistent with the Offense Classification Criteria for a Class H felony because 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 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:** 03/03/2023

**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 199 – DMV Proposed Legislative Changes [Ed. 1]

**STATUTE**

§ 20-111. Violation of registration provisions.

**DESCRIPTION**

Subsection (2):

A person who

1. a. displays or causes or permits to be displayed or has in possession  
b. any temporary registration plate or marker  
c. knowing the same to be fictitious or to have been canceled, revoked, suspended or altered, or
2. a. willfully displays  
b. an expired temporary registration plate or marker on a vehicle  
c. knowing the same to be expired.

**OFFENSE CLASS**

**CURRENT:** Class 3 misdemeanor.

**PROPOSED:** Class I felony, pursuant to G.S. 20-79.1(k).

**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 same conduct with a registration card, certificate of title or registration number plate remains a Class 3 misdemeanor. (G.S. 20-111(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:** 03/03/2023

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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 199 – DMV Proposed Legislative Changes [Ed. 1] (cont'd)

**STATUTE**

§ 20-111. Violation of registration provisions.

**DESCRIPTION**

Subsection (6):

A person who

1. gives, lends, sells, or obtains
2. a temporary registration plate or marker
3. for the purpose of such plate or marker being used for any purpose other than the registration, sale, or other use in connection with the vehicle for which the plate or marker was issued.

**OFFENSE CLASS**

**CURRENT:** Class 2 misdemeanor.

**PROPOSED:** Class I felony, pursuant to G.S. 20-79.1(k).

**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 same conduct with a certificate of title remains a Class 2 misdemeanor. (G.S. 20-111(6)).

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

**DATE OF REVIEW:** 03/03/2023

**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 237 – Criminal Law Revisions [Ed. 1]

**STATUTE**

§ 14-118.8. Money laundering.

**DESCRIPTION**

Subdivision (f)(1):

A person who

1. knowingly
2. does any of the following:
  - a. Acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity.
  - b. Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.
  - c. Invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity.
  - d. Finances or invests, or intends to finance or invest, funds that the person believes are intended to further the commission of criminal activity.
3. and the value of the proceeds or funds is less than \$100,000.

**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, or in significant societal injury as Class H felonies.

Money laundering is a civil offense under the North Carolina Racketeer Influenced and Corrupt Organizations Act (RICO). (Chapter 75D of the General Statutes)

**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:** 03/03/2023

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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 237 – Criminal Law Revisions [Ed. 1] (cont'd)

**STATUTE**

§ 14-118.8. Money laundering.

**DESCRIPTION**

Subdivision (f)(2):

A person who

4. knowingly
5. does any of the following:
  - e. Acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity.
  - f. Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.
  - g. Invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity.
  - h. Finances or invests, or intends to finance or invest, funds that the person believes are intended to further the commission of criminal activity.
6. and the value of the proceeds or funds is \$100,000 or more.

**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.

Money laundering is a civil offense under the North Carolina Racketeer Influenced and Corrupt Organizations Act (RICO). (Chapter 75D of the General Statutes)

**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:** 03/03/2023

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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 237 – Criminal Law Revisions [Ed. 1] (cont'd)

**STATUTE**

§ 15A-1340.16F. Enhanced sentence if defendant is convicted of a misdemeanor or felony and the defendant was wearing a mask, hood, or other clothing or device to conceal or attempt to conceal the defendant's identity.

**DESCRIPTION**

A person who

1. is convicted of a misdemeanor or felony and
2. wore a mask, hood, or other clothing or device that concealed or attempted to conceal the person's identity at the time of the offense.

**PUNISHMENT RANGE**

**CURRENT:** Punished according to the class of the felony or misdemeanor offense for which the person was convicted.

**PROPOSED:** Guilty of a misdemeanor or felony that is one class higher than the underlying misdemeanor or felony for which the person was convicted.

Notwithstanding any provision to the contrary, the court shall impose a sentence of imprisonment for a person convicted of an offense enhanced under this section if, after enhancement, the class of offense and prior record level permit active punishment as a sentence disposition.

**ANALYSIS**

This section does not apply if the evidence of wearing a mask, hood, or other clothing or device to conceal or attempt to conceal the person's identity is needed to prove an element of the underlying misdemeanor or felony.

Wearing of masks, hoods, etc., on public ways is a Class 1 misdemeanor. (G.S. 14-12.7)

Wearing of masks, hoods, etc., on public property is a Class 1 misdemeanor. (G.S. 14-12.8)

Entry, etc., upon premises of another while wearing of mask, hood, or other disguise is a Class 1 misdemeanor. (G.S. 14-12.9)

**FINDINGS**

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

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

G.S. 164-41 is not applicable.

Under Structured Sentencing, offenses are classified based on the harm or potential harm to the victim associated with the criminal activity. This bill increases the classification based on the offender's identity being concealed. This bill would be consistent with Structured Sentencing if it was an aggravating factor.

**DATE OF REVIEW:** 03/03/2023

**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 249 – January 6 Riot/Attempt Overthrow of Gov’t [Ed. 1]

**STATUTE**

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

**DESCRIPTION**

Subsection (c1):

A person who

5. willfully
6. engages in a riot (as defined in subsection (a)) and
7. in the course of the riot
8. attempts to overthrow the government of the United States, the State of North Carolina, or any political subdivision thereof.

**PROPOSED OFFENSE CLASS**

Class F felony.

**ANALYSIS**

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

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

Engaging in a riot is a Class 1 misdemeanor. (G.S. 14-288.2(b))

Engaging in a riot resulting in property damage in excess of \$1,500, or serious bodily injury, or where the participant has in his possession any dangerous weapon or substance, is a Class H felony. (G.S. 14-288.2(c))

**FINDINGS**

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

**DATE OF REVIEW:** 03/03/2023

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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 249 – January 6 Riot/Attempt Overthrow of Gov’t [Ed. 1] (cont’d)

**STATUTE**

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

**DESCRIPTION**

Subsection (f):

A person who

1. willfully
2. incites or urges another to engage in a riot (as defined in subsection (a)), and
3. such inciting or urging is a contributing cause of a riot in which a person attempts to overthrow the government of the United States, the State of North Carolina, or any political subdivision thereof.

**PROPOSED OFFENSE CLASS**

Class F felony.

**ANALYSIS**

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

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

Inciting or urging another to engage in a riot so that a riot occurs or a clear and present danger of a riot is created is a Class 1 misdemeanor. (G.S. 14-288.2(d))

Inciting or urging another to engage in a riot which is a contributing cause of a riot in which there is property damage in excess of \$1,500 or serious bodily injury is a Class F felony. (G.S. 14-288.2(e))

**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:** 03/03/2023

**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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 250 – Death by Distribution Revisions [Ed.1] / SB 189 – Fentanyl Drug Offenses/Increase Punishment [Ed. 1]
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (a1):

A person who

1. unlawfully delivers at least one certain controlled substance,
2. the ingestion of the certain controlled substance or substances causes the death of the user, and
3. the unlawful delivery was the proximate cause of the victim's death.

**PROPOSED OFFENSE CLASS**

Class C felony.

**ANALYSIS**

The Sentencing Commission did not recommend classifying homicide offenses as Class C felonies.

For the purposes of this section, the term "certain controlled substance" includes any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

The Sentencing Commission reviewed a substantially similar provision in draft form in June 2018 and in HB 474 in April 2019 and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class C felony but noted that the offense would be consistent with the Homicide Offense Classification Criteria for a Class E felony.

**FINDINGS**

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

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

Homicide Offense Classification Criteria are not applicable.

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

**DATE OF REVIEW:** 03/03/2023

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 250 – Death by Distribution Revisions [Ed.1] / SB 189 – Fentanyl Drug Offenses/Increase Punishment [Ed. 1] (cont'd)
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (a2):

A person who

1. unlawfully delivers at least one certain controlled substance,
2. the person acted with malice,
3. the ingestion of the certain controlled substance or substances causes the death of the user, and
4. the unlawful delivery was the proximate cause of the victim's death.

**PROPOSED OFFENSE CLASS**

Class B2 felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

This bill would repeal second degree murder when the death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user, a Class B2 felony. (G.S. 14-17(b)(2)) In *State v. Liner*, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

**FINDINGS**

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

**DATE OF REVIEW:** 03/03/2023

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 250 – Death by Distribution Revisions [Ed.1] / SB 189 – Fentanyl Drug Offenses/Increase Punishment [Ed. 1] (cont'd)
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (b):

A person who

1. The person unlawfully sells at least one certain controlled substance,
2. the ingestion of the certain controlled substance or substances causes the
3. death of the user, and
4. the unlawful sale was the proximate cause of the victim's death.

**PROPOSED OFFENSE CLASS**

Class B2 felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

This bill would repeal second degree murder when the death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user, a Class B2 felony. (G.S. 14-17(b)(2)) In *State v. Liner*, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

**FINDINGS**

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

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

Homicide Offense Classification Criteria are not applicable.

This offense would be consistent with the Homicide Offense Classification Criteria for a Class B felony if it included the element of malice. This offense would also be consistent with the Homicide Offense Classification Criteria for a Class C felony.

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	HB 250 – Death by Distribution Revisions [Ed.1] / SB 189 – Fentanyl Drug Offenses/Increase Punishment [Ed. 1] (cont'd)
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**STATUTE**

§ 14-18.4. Death by distribution of certain controlled substances; aggravated death by distribution of certain controlled substances; penalties.

**DESCRIPTION**

Subsection (c):

A person who

1. unlawfully sells at least one certain controlled substance,
2. the ingestion of the certain controlled substance or substances causes the death of the user,
3. the unlawful sale was the proximate cause of the victim's death, and has a previous conviction under this section, G.S. 90-95(a)(1), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a prior conviction in any federal or state court in the United States that is substantially similar to an offense listed, within 10 years of the date of the offense. In calculating the 10-year period under this subdivision, any period of time during which the person was incarcerated in a local, state, or federal detention center, jail, or prison shall be excluded.

**OFFENSE CLASS**

**CURRENT:** Class B2 felony.

**PROPOSED:** Class B1 felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

This bill would repeal second degree murder when the death was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user, a Class B2 felony. (G.S. 14-17(b)(2)) In *State v. Liner*, the Court of Appeals held that the State was required to prove the element of malice in order to support a charge of second degree murder in the context of a death resulting from the delivery of controlled substances. See 98 N.C. App. 600 (1990).

This provision extends the period in subdivision (c)(5) from seven years to ten years.

**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:** 03/03/2023

**IMPACT ANALYSIS NOT REQUESTED YET**

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 3 – NC Compassionate Care Act [Ed. 3]

**STATUTE**

§ 90-113.126. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (a):

A person who

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

**PROPOSED OFFENSE CLASS**

Class G felony.

**ANALYSIS**

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

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

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

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

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

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

The Sentencing Commission reviewed a substantially similar provision in September 2021 in SB 711, 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 the Offense Classification Criteria.

Offense Classification Criteria are not applicable.

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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 3 – NC Compassionate Care Act [Ed. 3] (cont'd)

**STATUTE**

§ 90-113.126. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (b):

A person who

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

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

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

The Sentencing Commission reviewed a substantially similar provision in September 2021 in SB 711, and found it inconsistent with the Offense Classification Criteria for a Class H felony, noting the offense would be consistent with the Offense Classification Criteria for a Class I felony.

**FINDINGS**

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

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified the creation, sale, or delivery, or possession with intent to sell or deliver a counterfeit controlled substance (G.S. 90-95(c)) as a Class I felony.

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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 3 – NC Compassionate Care Act [Ed. 3] (cont'd)

**STATUTE**

§ 90-113.126. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (d):

A person who

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

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

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

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

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

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

The Sentencing Commission reviewed a substantially similar provision in September 2021 in SB 711, and found it inconsistent with the Offense Classification Criteria for a Class H felony, noting the offense would be consistent with the Offense Classification Criteria for a Class I felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

This offense would be consistent with the Offense Classification Criteria for a Class I felony. The Sentencing Commission classified the possession of more than 1 ½ ounces of marijuana (G.S. 90-95(c)) as a Class I felony.

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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 3 – NC Compassionate Care Act [Ed. 3] (cont'd)

**STATUTE**

§ 90-113.126. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (f):

A person who

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

**PROPOSED OFFENSE CLASS**

Class I felony.

**ANALYSIS**

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

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

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

Possession of more than four dosage units of Hydromorphone, more than 100 dosage units of a Schedule II, III, or IV controlled substance, or any amount of Methamphetamine, Amphetamine, Cocaine, or Phencyclidine or derivative thereof is a Class I felony. (G.S. 90-95(d)(2))

The Sentencing Commission reviewed a substantially similar provision in September 2021 in SB 711, and found it inconsistent with the Offense Classification Criteria for a Class I felony.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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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)**

<b>BILL NUMBER/SHORT TITLE:</b>	SB 3 – NC Compassionate Care Act [Ed. 3] (cont'd)
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**STATUTE**

§ 90-113.126. Violations; penalties; and enhanced sentence for trafficking related to medical cannabis.

**DESCRIPTION**

Subsection (g):

A person who

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

**PUNISHMENT RANGE**

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

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

**ANALYSIS**

Drug trafficking offenses are not sentenced under Structured Sentencing.

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

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

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

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

The Sentencing Commission has reviewed similar punishment provisions in the past and found that to require an active sentence and set a minimum number of months is inconsistent with the principles of structured sentencing.

The Sentencing Commission reviewed a substantially similar provision in September 2021 in SB 711, and found it inconsistent.

## FINDINGS

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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:** 03/03/2023

**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 58 – Protect Critical Infrastructure [Ed. 2]

**STATUTE**

§ 14-150.2. Injuring energy facility.

**DESCRIPTION**

Subsection (b):

A person who

1. knowingly and willfully
  - a. destroys, injures, or otherwise damages,
  - b. or attempts to destroy, injure, or otherwise damage,
2. an energy facility.

**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.

Under this offense, an "energy facility" means any facility involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities related thereto, regardless of whether the facility is under construction or is otherwise not functioning. This term includes any line, wire, pipe, or other property or equipment used as part of the normal operation of the facility.

Section 4 of the bill repeals two existing misdemeanor offenses that cover the conduct described in G.S. 14-150.2: G.S. 14-152, injuring fixtures and other property of gas companies (Class 3 misdemeanor) and G.S. 14-156, injuring fixtures and other property of electric-power companies (Class 2 misdemeanor).

G.S. 14-74, larceny by servants and other employees (amount involved \$100,000 or more) and G.S. 14-90, embezzlement of property received by virtue of office or employment (amount involved \$100,000 or more), are Class C felonies.

Unless another classification is explicitly stated by statute, a felony attempt is punished at one class lower than the offense the offender attempted to commit (G.S. 14-2.5).

## FINDINGS

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



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



Offense Classification Criteria are not applicable.

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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 58 – Protect Critical Infrastructure [Ed. 2] (cont'd)

**STATUTE**

§ 14-150.2. Injuring energy facility.

**DESCRIPTION**

Subsection (c):

A person who

1. knowingly and willfully
  - a. destroys, injures, or otherwise damages,
  - b. or attempts to destroy, injure, or otherwise damage,
2. an energy facility, and
3. the violation results in the death of another.

**PROPOSED OFFENSE CLASS**

Class B2 felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

Murder in the 2nd degree (depraved heart malice), is Class B2 felony. (G.S. 14-17(b)(1))

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

Interfering with gas, electric and steam appliances or meters; penalties (resulting in death), is a Class D felony. (G.S. 14-151(d)(4))

**FINDINGS**

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

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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 58 – Protect Critical Infrastructure [Ed. 2] (cont'd)

**STATUTE**

§ 14-159.12. First degree trespass.

**DESCRIPTION**

Subsection (c)(1):

A person who

1. without authorization
2. enters or remains on or in
  - a. any facility used or available for use in the collection, treatment, testing, storing, pumping, or distribution of water for a public water system,
  - b. any facility used or operated for agricultural activities, as that term is defined in G.S. 106-581.1,
  - c. any facility involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities related thereto, regardless of whether the facility is under construction or is otherwise not functioning, or
  - d. A facility owned by a public utility, as that term is defined under G.S. 62-3, or a unit of local government, used for the treatment of wastewater, including sewage, industrial waste, or other wastes of a liquid nature
3. and the person actually entered a building, or it was necessary for the person to climb over, go under, or otherwise surmount a fence or other barrier to reach the facility.

**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.



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First degree trespass (G.S. 14-159.12)

- Subsection (b) is a Class 2 misdemeanor.
- Subsection (f) is a Class I felony if the person reentered after having previously been removed pursuant to execution of valid order or writ for possession; under color of title where person has knowingly created or provided materially false evidence of ownership or possessory interest; or second or subsequent violation of subdivision (a)(3).

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

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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 58 – Protect Critical Infrastructure [Ed. 2] (cont'd)

**STATUTE**

§ 14-159.12. First degree trespass.

**DESCRIPTION**

Subsection (d):

A person who

1. commits first degree trespass as in subsection (c) of this section, and
2. a. with the intent to disrupt the normal operation of any of the facilities described in subdivision (1) of subsection (c) of this section, or  
b. involves an act that places either the offender or others on the premises at risk of serious bodily injury.

**OFFENSE CLASS**

**CURRENT:** Class H felony.

**PROPOSED:** Class G felony.

**ANALYSIS**

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

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

Burglary in the 2<sup>nd</sup> degree is a Class G felony. (G.S. 14-51, -52)

**FINDINGS**

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

This offense would be consistent with the Offense Classification Criteria for a Class F felony when it results in serious bodily injury.

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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 58 – Protect Critical Infrastructure [Ed. 2] (cont'd)

**STATUTE**

§ 14-154. Injuring wires and other fixtures of telephone and broadband companies.

**DESCRIPTION**

A person who:

1. willfully injures, destroys, or pulls down
2. a. any telephone, broadband, or cable telecommunications pedestal or pole, or any apparatus, equipment, or fixture used in the transmission of telephone, broadband, or cable telecommunications, or  
b. any apparatus, equipment, or fixture related to wireless communications regulated by the Federal Communications Commission.

**OFFENSE CLASS**

**CURRENT:** Class I 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 serious property loss or societal injury as Class I felonies.

G.S. 14-74, larceny by servants and other employees (amount involved \$100,000 or more) and G.S. 14-90, embezzlement of property received by virtue of office or employment (amount involved \$100,000 or more), are Class C felonies.

**FINDINGS**

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

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

Offense Classification Criteria are not applicable.

This offense would also be consistent with the Offense Classification Criteria for a Class F or Class H felony, depending on the degree of harm to property that occurs.

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** SB 58 – Protect Critical Infrastructure [Ed. 2] (cont'd)

**STATUTE**

§ 62-323. Willful injury to property of public utility a felony.

**DESCRIPTION**

A person who:

1. willfully does or causes to be done
2. any act or acts whatever whereby any building, construction or work of any public utility, or any engine, machine or structure or any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed.

**OFFENSE CLASS**

**CURRENT:** Class 1 misdemeanor.

**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 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. 14-49.1, malicious damage of occupied property by use of explosive or incendiary, is a Class D felony. G.S. 14-144, injuring houses, churches, fences and walls (if damage caused is more than \$5,000), is a Class I felony. G.S. 14-151(d)(3), interfering with gas, electric and steam appliances or meters; penalties (resulting in significant property damage or public endangerment), is a Class F felony.

**FINDINGS**

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

**DATE OF REVIEW:** 03/03/2023

**IMPACT ANALYSIS NOT REQUESTED YET**