

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

## REPORT #4

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## NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

This report by the Sentencing Commission includes all bills introduced or amended through August 2, 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 August 2, 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

CLASS	CRITERIA
	<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 #3 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS**  
**August 2, 2023**

<b>Bill</b>	<b>Short Title</b>	<b>Provision</b>	<b>Proposal</b>	<b>Finding</b>	<b>Commentary</b>	<b>Page</b>
HB 258	Novel Opioid Control Act of 2023 [Ed. 3]	G.S. 14-18.4(a1)	Class C	Inconsistent	Would be consistent with a Class E felony.	<a href="#">1</a>
		G.S. 14-18.4(a2)	Class B2	Consistent		<a href="#">2</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 E felony.	<a href="#">3</a>
		G.S. 14-18.4(c)	Class B1	Consistent		<a href="#">4</a>
HB 748	Child Abuse and Other Criminal Law Changes [Ed. 3]	G.S. 14-318.7(b)	Class H	Consistent		<a href="#">5</a>
		G.S. 14-318.7(c)	Class E	Inconsistent	Would be consistent with a Class F felony.	<a href="#">6</a>
		G.S. 14-318.7(d)	Class D	Inconsistent	Would be consistent with a Class E felony.	<a href="#">7</a>
		G.S. 14-318.7(e)	Class C	Inconsistent	Would be consistent with a Class C felony if it resulted in serious permanent bodily injury.	<a href="#">8</a>
		G.S. 14-318.7(f)	Class B1	Consistent		<a href="#">9</a>
SB 579	Prevent Harm to Children [Ed. 2]	G.S. 14-190.15A(b)	Class I	Inconsistent	The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.	<a href="#">10</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 258 - Novel Opioid Control Act of 2023 [Ed. 3]

**STATUTE**

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

**DESCRIPTION**

Subsection (a1) Death by Distribution Through Unlawful Delivery of Certain Controlled Substances:

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 commission of the offense 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. ("Malice" is not an element of this offense (see subsection (a2) below).)

For the purposes of this statute, 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. (G.S. 14-18.4(d))

Death by distribution is a Class C felony for the sale of at least one certain controlled substance. (G.S. 14-18.4(b))

Murder in the 2<sup>nd</sup> degree (by distribution of certain controlled substances (listed)) is a Class B2 felony. (G.S. 14-17(b)(2)) This bill would repeal that provision.

The Sentencing Commission reviewed an identical provision in March 2023 in HB 250 and SB189 and found it inconsistent with the Homicide Offense Classification Criteria for a Class C felony with a note that it would be consistent with the Homicide Offense Classification Criteria for a Class E felony or a Class B 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:** 08/02/2023

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 258 - Novel Opioid Control Act of 2023 [Ed. 3] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (a2) Death by Distribution Through Unlawful Delivery with Malice of Certain Controlled Substances:

A person who

1. unlawfully delivers at least one certain controlled substance;
2. with malice;
3. the ingestion of the certain controlled substance or substances causes the death of the user; and
4. the commission of the offense was the proximate cause of the victim's death.

**PROPOSED OFFENSE CLASS**

Class B2 felony.

**ANALYSIS**

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

For the purposes of this statute, 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. (G.S. 14-18.4(d))

Murder in the 2nd degree is a Class B1 felony (except as provided in subdivisions (b)(1) and (2)). (G.S. 14-17(b))

Murder in the 2<sup>nd</sup> degree (an inherently dangerous act or omission, done in a reckless and wanton manner) is a Class B2 felony. (G.S. 14-17(b)(1))

Murder in the 2nd degree (by distribution of certain controlled substances (listed)) is a Class B2 felony. (G.S. 14-17(b)(2)) This bill would repeal that provision.

The Sentencing Commission reviewed an identical provision in March 2023 in HB 250 and SB189 and found it consistent with the Homicide Offense Classification Criteria for a Class B 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:** 08/02/2023

**BILL CONTINUED ON NEXT PAGE**

2 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 258 – Novel Opioid Control Act of 2023 [Ed. 3] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (b) Death by Distribution Through Unlawful Sale of Certain Controlled Substances:

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; and
3. the commission of the offense was the proximate cause of the victim's death.

**OFFENSE CLASS**

**CURRENT:** Class C felony.

**PROPOSED:** Class B2 felony.

**ANALYSIS**

The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies. The Sentencing Commission did not recommend classifying homicide offenses as Class C felonies.

Murder in the 2nd degree is a Class B1 felony (except as provided in subdivision (b)(1)). (G.S. 14-17(b))

Murder in the 2<sup>nd</sup> degree (an inherently dangerous act or omission, done in a reckless and wanton manner) is a Class B2 felony. (G.S. 14-17(b)(1))

The Sentencing Commission reviewed an identical provision in March 2023 in HB 250 and SB189 and found it inconsistent with the Homicide Offense Classification Criteria for a Class B felony with a note that it would be consistent with the Homicide Offense Classification Criteria for a Class B felony if it included the element of malice or that it would be consistent with the Homicide Offense Classification Criteria for a Class C 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 B felony if it included the element of malice. This offense would also be consistent with the Homicide Offense Classification Criteria for a Class E felony.

**DATE OF REVIEW:** 08/02/2023

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 258 - Novel Opioid Control Act of 2023 [Ed. 3] (cont'd)

**STATUTE**

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

**DESCRIPTION**

Subsection (c) Aggravated Death by Distribution Through Unlawful Sale of Certain Controlled Substances:

A person who

1. unlawfully sells at least one certain controlled substance;
2. the ingestion of the certain controlled substance or substances caused the death of the user;
3. the commission of the offense was the proximate cause of the victim's death; and
4. the person 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.

**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.

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

Murder in the 2<sup>nd</sup> degree is a Class B1 felony (except as provided in subdivision (b)(1)). (G.S. 14-17(b))  
Murder in the 2<sup>nd</sup> degree (an inherently dangerous act or omission, done in a reckless and wanton manner) is a Class B2 felony. (G.S. 14-17(b)(1))

The Sentencing Commission reviewed an identical provision in March 2023 in HB 250 and SB189 and found it consistent with the Homicide Offense Classification Criteria for a Class B 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:** 08/02/2023

**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 748 – Child Abuse and Other Criminal Law Changes [Ed. 3]

**STATUTE**

§ 14-318.7. Exposing a child to a controlled substance.

**DESCRIPTION**

Subsection (b):

A person who

1. knowingly, recklessly, or intentionally
2. causes or permits a child to be exposed to a controlled substance.

**PROPOSED OFFENSE CLASS**

Class H felony.

**ANALYSIS**

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

The following definitions apply in this section:

- (1) Child. – Any person who is less than 16 years of age.
- (2) Controlled substance. – A controlled substance, controlled substance analogue, drug, marijuana, narcotic drug, opiate, opioid, opium poppy, poppy straw, or targeted controlled substance, all as defined in G.S. 90-87. 18.

It is currently an aggravating factor if a person is convicted of manufacture of methamphetamine and it was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste. (G.S. 15A-1340.16(d)(16a))

**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:** 08/02/2023

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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 748 – Child Abuse and Other Criminal Law Changes [Ed. 3]  
(cont'd)

**STATUTE**

§ 14-318.7. Exposing a child to a controlled substance.

**DESCRIPTION**

Subsection (c):

A person who

1. knowingly, recklessly, or intentionally
2. causes or permits a child to be exposed to a controlled substance, and
3. as a result the child ingests the controlled substance.

**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 following definitions apply in this section:

- (1) Child. – Any person who is less than 16 years of age.
- (2) Controlled substance. – A controlled substance, controlled substance analogue, drug, marijuana, narcotic drug, opiate, opioid, opium poppy, poppy straw, or targeted controlled substance, all as defined in G.S. 90-87.18
- (3) Ingest. – Any means used to take into the body, to eat or drink, or otherwise consume, or absorb into the body in any way.

Child abuse (willful act or grossly negligent omission which shows a reckless disregard for human life and results in serious bodily injury to the child) is a Class E felony. (G.S. 14-318.4(a4))

**FINDINGS**



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



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



Offense Classification Criteria are not applicable.

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

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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 748 – Child Abuse and Other Criminal Law Changes [Ed. 3]  
(cont'd)

**STATUTE**

§ 14-318.7. Exposing a child to a controlled substance.

**DESCRIPTION**

Subsection (d):

A person who

1. knowingly, recklessly, or intentionally
2. causes or permits a child to be exposed to a controlled substance, and
3. as a result the child ingests the controlled substance,
4. resulting in serious physical injury.

**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.

The following definitions apply in this section:

- (1) Child. – Any person who is less than 16 years of age.
- (2) Controlled substance. – A controlled substance, controlled substance analogue, drug, marijuana, narcotic drug, opiate, opioid, opium poppy, poppy straw, or targeted controlled substance, all as defined in G.S. 90-87. 18
- (3) Ingest. – Any means used to take into the body, to eat or drink, or otherwise consume, or absorb into the body in any way.

Child abuse (willful act or grossly negligent omission which shows a reckless disregard for human life and results in serious bodily injury to the child) is a Class E felony. (G.S. 14-318.4(a4))

**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 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:** 08/02/2023

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

**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 748 – Child Abuse and Other Criminal Law Changes [Ed. 3]  
(cont'd)

**STATUTE**

§ 14-318.7. Exposing a child to a controlled substance

**DESCRIPTION**

Subsection (e):

A person who

1. knowingly, recklessly, or intentionally
2. causes or permits a child to be exposed to a controlled substance, and
3. as a result the child ingests the controlled substance,
4. resulting in serious bodily injury.

**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.

The following definitions apply in this section:

- (1) Child. – Any person who is less than 16 years of age.
- (2) Controlled substance. – A controlled substance, controlled substance analogue, drug, marijuana, narcotic drug, opiate, opioid, opium poppy, poppy straw, or targeted controlled substance, all as defined in G.S. 90-87. 18
- (3) Ingest. – Any means used to take into the body, to eat or drink, or otherwise consume, or absorb into the body in any way.

Child abuse (willful act or grossly negligent omission which shows a reckless disregard for human life and results in serious bodily injury to the child) is a Class E felony. (G.S. 14-318.4(a4))

**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 C felony if it resulted in serious permanent bodily injury. 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.

**DATE OF REVIEW:** 08/02/2023

**BILL CONTINUED ON NEXT PAGE**

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



**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**

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

**BILL NUMBER/SHORT TITLE:** HB 748 – Child Abuse and Other Criminal Law Changes [Ed. 3]  
(cont'd)

**STATUTE**

§ 14-318.7. Exposing a child to a controlled substance

**DESCRIPTION**

Subsection (f):

A person who

1. knowingly, recklessly, or intentionally
2. causes or permits a child to be exposed to a controlled substance, and
3. as a result the child ingests the controlled substance, and
4. the ingestion is the proximate cause of death.

**PROPOSED OFFENSE CLASS**

Class B1 felony.

**ANALYSIS**

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

The following definitions apply in this section:

(1) Child. – Any person who is less than 16 years of age.

(2) Controlled substance. – A controlled substance, controlled substance analogue, drug, marijuana, narcotic drug, opiate, opioid, opium poppy, poppy straw, or targeted controlled substance, all as defined in G.S. 90-87. 18

(3) Ingest. – Any means used to take into the body, to eat or drink, or otherwise consume, or absorb into the body in any way.

Death by distribution of certain controlled substances is a Class C felony. (G.S. 14-18.4(b))

Death by distribution of certain controlled substances (aggravated by a prior conviction for certain offenses) is a Class B2 felony. (G.S. 14-18.4(c))

**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:** 08/02/2023

**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 579 – Prevent Harm to Children [Ed. 2]

**STATUTE**

§ 14-190.15A. Restrictions on adult live entertainment.

**DESCRIPTION**

Subsection (b):

A person who

1. engages in adult live entertainment on public property;
2. engages in adult live entertainment knowing, or having reason to know, that individuals under the age of 18 are present;
3. expends public funds
  - i. to adult live entertainment performers,
  - ii. for an event at which adult live entertainment is performed, or
  - iii. to promote adult live entertainment or an event at which adult live entertainment will be performed.

**PROPOSED OFFENSE CLASS**

Class I felony for a second or subsequent offense.

**ANALYSIS**

The Sentencing Commission classified offenses which reasonably tend to result or do result in serious property loss or societal injury as Class I felonies. The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level.

The first offense is a Class A1 misdemeanor.

The term "adult live entertainment" is currently defined as any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section. (G.S. 14-202.10(3))

The Sentencing Commission reviewed a similar provision proposed as a Class I felony for a second and subsequent offense in April 2023 in HB 673 and found it inconsistent because the felony 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:** 08/02/2023

**IMPACT ANALYSIS NOT REQUESTED YET**