

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

REPORT #2

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Research & Policy Associate

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Research & Policy Associate

Shelley Kirk
Administrative Secretary

PO Box 2448
Raleigh, NC 27602
(919) 890-1470
www.NCSPAC.org

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

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

This report by the Sentencing Commission includes all bills introduced or amended through June 7, 2024. 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 June 7, 2024.

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 June 7, 2024.

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

* Personal injury includes both physical and mental injury.

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

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

HOMICIDE OFFENSE CLASSIFICATION CRITERIA

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

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION
REPORT #2 ON PROPOSED LEGISLATION – SUMMARY OF FINDINGS
June 7, 2024

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
HB 237	Unmasking Mobs and Criminals [Ed. 4]	G.S. 15A-1340.16G	Enhancement	Inconsistent	Would be consistent as an aggravating factor.	1
		G.S. 20-174.1(c)	Class H	Inconsistent	Would be consistent with Class I felony for all violations.	3
HB 250	ME/IDS/Driving Privileges/Xylazine Changes [Ed. 3]	G.S. 14-18.5(b)	Class C	Inconsistent	Would be consistent with a Class E felony.	5
		G.S. 14-18.5(c)	Class B2	Consistent		6
		G.S. 14-18.5(d)	Class B2	Inconsistent	Would be consistent if it included malice.	7
		G.S. 14-18.5(e)	Class B1	Inconsistent	Increasing offense class based on prior convictions is inconsistent with Structured Sentencing.	8
HB 495	Revise Money Laundering/Retail Crime [Ed. 2]	G.S. 14-118.8	Class H	Consistent		9
		G.S. 14-118.8	Class C	Consistent		11
		G.S. 14-86.6(a)(1)	Class H	Inconsistent	Would be consistent with a Class I felony.	13
		G.S. 14-86.6(a)(1)	Class G	Inconsistent	Would be consistent with a Class H felony.	14
		G.S. 14-86.6(a)(1)	Class F	Consistent		15
		G.S. 14-86.6(a)(1)	Class C	Consistent		16

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-72.1(d2)	Class H	Inconsistent	Would be consistent with a misdemeanor.	17
		G.S. 14-72.11(6)	Class H	Inconsistent		18
		G.S. 14-72.11(7)	Class H	Consistent		19
		G.S. 14-72.11(8)	Class H	Consistent		20
HB 591	Modernize Sex Crimes [Ed. 3]	G.S. 14-202.7(b)(1)	Class F	Consistent		21
		G.S. 14-202.7(b)(3)	Class F	Inconsistent	Would be consistent with a Class F felony for all violations.	22
		G.S. 14-202.7(c)	Class E	Inconsistent	Would be consistent with a Class C felony.	24
		G.S. 14-190.16(a)(5)	Class D	Inconsistent	Would be consistent with a Class C felony.	26
		G.S. 14-190.16(a)(6)	Class D	Inconsistent	Would be consistent with a Class C felony.	27
		G.S. 14-190.17(a)(2)	Class E	Consistent	Would also be consistent with a Class C felony.	28
		G.S. 14-190.17(a)(3)	Class E	Inconsistent	Would be consistent with a Class C or F felony.	29
		G.S. 14-190.17A(a)	Class H	Consistent		30
		G.S. 14-190.17C(a)	Class E	Inconsistent	Would be consistent with a Class C or F felony.	31
		G.S. 14-190.17C(b)	Class H	Consistent		32

Bill	Short Title	Provision	Proposal	Finding	Commentary	Page
		G.S. 14-202.3(a)(3)	Class H	Consistent		33
		G.S. 14-202.3(a)(3)	Class G	Inconsistent	Would be consistent with a Class F felony.	34
		G.S. 14-190.5A(b),(c)(1)	Class H	Consistent		36
		G.S. 14-190.5A(b),(c)(3)	Class H	Inconsistent	Would be consistent with a Class H felony for all violations.	37
HB 1070	Property Rights and Protections [Ed. 1]	G.S. 14-127	Class I	Inconsistent		48
		G.S. 14-117.8(a)	Class H	Consistent		49
		G.S. 14-117.8(b)	Class I	Inconsistent	Would be consistent with a Class H felony.	50

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 – Unmasking Mobs and Criminals [Ed. 4]

STATUTE

§ 15A-1340.16G. Enhanced sentence if defendant is convicted of a misdemeanor or felony and the defendant was wearing a mask 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 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)

Holding meeting or demonstrations while wearing masks, hoods, etc. is a Class 1 misdemeanor. (G.S. 14-12.10)

The Sentencing Commission reviewed a substantially similar provision in March 2023 in HB 237 [Ed. 1] and found it to be inconsistent with G.S. 164-41 because offenses are classified based on the harm or potential harm to the victim associated with the criminal activity. The Commission noted that this provision would be consistent with Structured Sentencing if it was an aggravating factor.

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: 06/07/2024

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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 – Unmasking Mobs and Criminals [Ed. 4] (cont'd)

STATUTE

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited; obstruction of emergency vehicles; civil liability.

DESCRIPTION

Subsection (c):

A person who

1. willfully stands, sits, or lies upon the highway or street
2. in such a manner as to impede the regular flow of traffic,
3. while participating in a demonstration intended to prohibit or impede the use of the highway or street.

PROPOSED OFFENSE CLASS

Class H 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 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 first offense is a Class A1 misdemeanor.

A person who willfully stands, sits, or lies upon the highway or street in such a manner as to impede the regular flow of traffic is guilty of a Class 2 misdemeanor. (G.S. 20-174.1(a))

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

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.

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

DATE OF REVIEW: 06/07/2024

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 250 – ME/IDS/Driving Privileges/Xylazine Changes [Ed.3]

STATUTE

§ 14-18.5. Death by distribution of xylazine; aggravated death by distribution of xylazine; penalties.

DESCRIPTION

Subsection (b):

Death by Distribution Through Delivery of Xylazine.

A person who

1. delivers xylazine,
2. the ingestion of the xylazine causes the death of the user, and
3. the delivery of the xylazine 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.

Xylazine is a non-opiate sedative, analgesic, and muscle relaxant authorized for veterinary use only by the U.S. Food and Drug Administration. It is not a controlled substance.

Death by distribution of certain controlled substances (unlawful delivery) is a Class C felony. (G.S. 14-18.4(a1)) The Sentencing Commission reviewed that provision in draft form in June 2018, in April 2019 in HB 474, and in March 2023 in SB 189 (became G.S. 14-18.4(a1)) 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 or a Class B felony (added Class B in the 2023 review).

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

DATE OF REVIEW: 06/07/2024

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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 250 – ME/IDS/Driving Privileges/Xylazine Changes [Ed.3] (cont'd)

STATUTE

§ 14-18.5. Death by distribution of xylazine; aggravated death by distribution of xylazine; penalties.

DESCRIPTION

Subsection (c):

Death by Distribution Through Delivery with Malice of Xylazine.

A person who

1. delivers xylazine,
2. the person acted with malice,
3. the ingestion of the xylazine causes the death of the user, and
4. the delivery of the xylazine 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.

Death by distribution of certain controlled substances (unlawful delivery with malice) is a Class B2 felony. (G.S. 14-18.4(a2)) The Sentencing Commission reviewed that provision in March 2023 in SB 189 (became G.S. 14-18.4(a2)) and found it to be consistent with the Homicide Offense Classification Criteria for a Class B 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: 06/07/2024

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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 250 – ME/IDS/Driving Privileges/Xylazine Changes [Ed.3] (cont'd)

STATUTE

§ 14-18.5. Death by distribution of xylazine; aggravated death by distribution of xylazine; penalties.

DESCRIPTION

Subsection (d):

Death by Distribution Through Sale of Xylazine.

A person who

1. sells xylazine,
2. the ingestion of the xylazine causes the death of the user, and
3. the sale of the xylazine 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.

Death by distribution of certain controlled substances (unlawful sale) is a Class B2 felony. (G.S. 14-18.4(b)) The Sentencing Commission reviewed that provision in March 2023 in SB 189 (became G.S. 14-18.4(b)) and found it to be inconsistent with the Homicide Offense Classification Criteria for a Class B felony but noted that the offense would be consistent with the Homicide Offense Classification Criteria for a Class B felony if it included the element of malice.

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 Homicide Offense Classification Criteria for a Class B felony if it included the element of malice. The Sentencing Commission recommends classifying offenses that proscribe an intentional killing with malice as Class B felonies.

DATE OF REVIEW: 06/07/2024

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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 250 – ME/IDS/Driving Privileges/Xylazine Changes [Ed.3]
(cont'd)

STATUTE

§ 14-18.5. Death by distribution of xylazine; aggravated death by distribution of xylazine; penalties.

DESCRIPTION

Subsection (e):

Aggravated Death by Distribution Through Sale of Xylazine.

A person who

1. sells xylazine,
2. the ingestion of the xylazine causes the death of the user,
3. the sale of the xylazine was the proximate cause of the victim's death, and
4. the person has a previous conviction under this section, G.S. 14-18.4, 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.

PROPOSED OFFENSE CLASS

Class B1 felony.

ANALYSIS

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

Death by distribution of certain controlled substances (aggravated death, through sale) is a Class B1 felony. (G.S. 14-18.4(c)) The Sentencing Commission reviewed that provision in March 2023 in SB 189 (became G.S. 14-18.4(c)) and found it to be consistent with the Homicide Offense Classification Criteria for a Class B felony. 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: 06/07/2024

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
8 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 495 – Revise Money Laundering/Retail Crime [Ed. 2]

STATUTE

§ 14-118.8. Money laundering.

DESCRIPTION

A person/organization who knowingly and willfully does any of the following:

1. Acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity.
2. Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.
3. 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.
4. Finances or invests, or intends to finance or invest, funds that the person believes are intended to further the commission of criminal activity.
5. Uses, transports, transmits, or transfers; conspires to use, transport, transmit, or transfer; or attempts to use, transport, transmit, or transfer the proceeds of criminal activity to conduct or attempt to conduct a transaction or make other disposition with the intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds of criminal activity.
6. Uses the proceeds of criminal activity with the intent to promote, in whole or in part, the commission of criminal activity.
7. Conducts or attempts to conduct a transaction involving the proceeds of criminal activity, knowing the property involved in the transaction constitutes proceeds of criminal activity with the intent to avoid a transaction reporting requirement under federal law.

PROPOSED OFFENSE CLASS

Class H felony if the value of the funds alone or aggregated exceed \$10,000 but is less than \$100,000.

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.

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

The Sentencing Commission reviewed a substantially similar provision in March 2023 in HB 237 and found it to be consistent with the Offense Classification Criteria for a Class H felony; however, the provision did not include subdivisions 5 through 7.

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.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/07/2024

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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-118.8. Money laundering.

DESCRIPTION

A person/organization who knowingly and willfully does any of the following:

1. Acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity.
2. Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.
3. 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.
4. Finances or invests, or intends to finance or invest, funds that the person believes are intended to further the commission of criminal activity.
5. Uses, transports, transmits, or transfers; conspires to use, transport, transmit, or transfer; or attempts to use, transport, transmit, or transfer the proceeds of criminal activity to conduct or attempt to conduct a transaction or make other disposition with the intent to conceal or disguise the nature, location, source, ownership, or control of the proceeds of criminal activity.
6. Uses the proceeds of criminal activity with the intent to promote, in whole or in part, the commission of criminal activity.
7. Conducts or attempts to conduct a transaction involving the proceeds of criminal activity, knowing the property involved in the transaction constitutes proceeds of criminal activity with the intent to avoid a transaction reporting requirement under federal law

PROPOSED OFFENSE CLASS

Class C felony if the value of the funds alone or aggregated is \$100,000 or more.

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 (RICO) Act. (Chapter 75D of the General Statutes)

The Sentencing Commission reviewed a substantially similar provision in March 2023 in HB 237 and found it consistent with the Offense Classification Criteria for a Class C felony; however, the provision did not include subdivisions 5 through 7.

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.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/07/2024

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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subdivision (a)(1):

A person who

1. conspires with another person
2. to commit theft of retail property from retail establishments
3. with the intent to sell, transfer, or possess that retail property for monetary or other gain.

PROPOSED OFFENSE CLASS

Class H felony if the value of the retail property exceeds \$1,500 aggregated over a 90-day period.

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.

Under Structured Sentencing, conspiracy to commit a felony is punished one class lower than the felony they conspired to commit.

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

DATE OF REVIEW: 06/07/2024

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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subdivision (a)(1):

A person who

1. conspires with another person
2. to commit theft of retail property from retail establishments
3. with the intent to sell, transfer, or possess that retail property for monetary or other gain.

PROPOSED OFFENSE CLASS

Class G felony if the value of the retail property exceeds \$20,000 aggregated over a 90-day period.

ANALYSIS

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

Under Structured Sentencing, conspiracy to commit a felony is punished one class lower than the felony they conspired to commit.

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. 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.

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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont’d)

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subdivision (a)(1):

A person who

1. conspires with another person
2. to commit theft of retail property from retail establishments
3. with the intent to sell, transfer, or possess that retail property for monetary or other gain.

PROPOSED OFFENSE CLASS

Class F felony if the value of the retail property exceeds \$50,000 aggregated over a 90-day period.

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.

Under Structured Sentencing, conspiracy to commit a felony is punished one class lower than the felony they conspired to commit.

The Sentencing Commission reviewed the current provision without “the intent to transfer or possess” in June 2022 in HB 1005 and found it consistent with the Offense Classification Criteria for a Class F felony when the value exceeded \$50,000 aggregated over 90-days.

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/07/2024

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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont’d)

STATUTE

§ 14-86.6. Organized retail theft.

DESCRIPTION

Subdivision (a)(1):

A person who

1. conspires with another person
2. to commit theft of retail property from retail establishments
3. with the intent to sell, transfer, or possess that retail property for monetary or other gain.

PROPOSED OFFENSE CLASS

Class C felony if the value of the retail property exceeds \$100,000 aggregated over a 90-day period.

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 Structured Sentencing, conspiracy to commit a felony is punished one class lower than the felony they conspired to commit.

The Sentencing Commission reviewed the current provision without “the intent to transfer or possess” in June 2022 in HB 1005 and found it consistent with the Offense Classification Criteria for a Class C felony when the value exceeded \$100,000 aggregated over 90-days.

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: HB 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-72.1. Concealment of merchandise in mercantile establishments.

DESCRIPTION

Subsection(d2):

A person who

1. without authority
2. willfully transfers any price tag, product code, or other price mechanism
3. from goods or merchandise to other goods or merchandise having a selling price in excess of \$200.00 higher than the price tag, product code, or other price mechanism from which the price tag, product code, or other pricing mechanism was transferred
4. and presents said goods or merchandise for purchase.

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.

Concealment of merchandise in mercantile establishments (by transferring price tags or substituting false price tag) is a Class 3 misdemeanor for the first offense, Class 2 misdemeanor for the second offense, and Class 1 misdemeanor for the third or subsequent offense. (G.S. 14-72.1(d))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

Note: This offense would be consistent with a misdemeanor.

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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-72.11. Larceny from a merchant.

DESCRIPTION

Subsection (6):

A person who

1. fraudulently creates a product code or any other price mechanism utilized by a merchant to determine the price of a good
2. with the intent to fraudulently obtain goods or merchandise from a merchant at less than its actual sale price.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Larceny from a merchant is a Class H felony. (G.S. 14-72.11(1)-(5))

Larceny of property, receiving stolen goods, or possessing stolen goods, is a Class H felony when the value of the goods is more than \$1,000, and a Class 1 misdemeanor when the value of the goods is \$1,000 or less. (G.S. 14-72(a))

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: HB 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-72.11. Larceny from a merchant.

DESCRIPTION

Subsection (7):

A person who

1. affixes a product code or any other price mechanism utilized by a merchant to determine the price of a good
2. when the product code or other price mechanism was created by someone other than the merchant or manufacturer of the goods or merchandise
3. for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Larceny from a merchant is a Class H felony. (G.S. 14-72.11(1)-(5))

Larceny of property, receiving stolen goods, or possessing stolen goods, is a Class H felony when the value of the goods is more than \$1,000, and a Class 1 misdemeanor when the value of the goods is \$1,000 or less. (G.S. 14-72(a))

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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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 495 – Revise Money Laundering/Retail Crime [Ed. 2] (cont'd)

STATUTE

§ 14-72.11. Larceny from a merchant.

DESCRIPTION

Subsection (8):

A person who

1. presents a good for purchase
2. for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sales price
3. knowing that a product code or any other price mechanism utilized by a merchant to determine the price of the good has been replaced by a product code or other price mechanism created by someone other than the merchant or manufacturer.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

Larceny from a merchant is a Class H felony. (G.S. 14-72.11(1)-(5))

Larceny of property, receiving stolen goods, or possessing stolen goods, is a Class H felony when the value of the goods is more than \$1,000, and a Class 1 misdemeanor when the value of the goods is \$1,000 or less. (G.S. 14-72(a))

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/07/2024

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 591 – Modernize Sex Crimes [Ed. 3]

STATUTE

§ 14-202.7. Sexual extortion; aggravated sexual extortion.

DESCRIPTION

Subdivision (b)(1):

A person who

1. intentionally threatens
 - a. to disclose a private image or
 - b. to decline to delete, remove, or retract, a previously disclosed private image, of the victim or an immediate family member of the victim
2. to compel or attempt to compel the victim or an immediate family member of the victim to
 - a. do any act or
 - b. refrain from doing any act against the victim's will
3. with the intent to obtain
 - a. additional private images or
 - b. anything else of value or
 - c. any acquittance, advantage, or immunity.

PROPOSED OFFENSE CLASS

Class F felony for a person who is an adult at the time of the offense.

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.

Blackmailing is a Class 1 misdemeanor. (G.S. 14-118)

Extortion is a Class F felony. (G.S. 14-118.4)

Cyberstalking is a Class 2 Misdemeanor. (G.S. 14-196(d))

FINDINGS

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

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

Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/07/2024

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-202.7. Sexual extortion; aggravated sexual extortion.

DESCRIPTION

Subdivision (b)(3):

A person who

1. intentionally threatens
 - a. to disclose a private image or
 - b. to decline to delete, remove, or retract, a previously disclosed private image, of the victim or an immediate family member of the victim
2. to compel or attempt to compel the victim or an immediate family member of the victim to
 - a. do any act or
 - b. refrain from doing any act against the victim's will
3. with the intent to obtain
 - a. additional private images or
 - b. anything else of value or
 - c. any acquittance, advantage, or immunity.

PROPOSED OFFENSE CLASS

Class F felony for a person who is a minor at the time of the offense and it is their second or subsequent offense.

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.

“Minor” is defined as a person who has not reached the age of 18 years. (G.S. 14-202.7(a)(6))

The first offense by a minor is a Class 1 misdemeanor. (G.S. 14-202.7(b)(2))

Blackmailing is a Class 1 misdemeanor. (G.S. 14-118)

Extortion is a Class F felony. (G.S. 14-118.4)

Cyberstalking is a Class 2 Misdemeanor. (G.S. 14-196(d))

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.

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.

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

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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 591 – Modernize Sex Crimes [Ed. 3] (cont'd)

STATUTE

§ 14-202.7. Sexual extortion; aggravated sexual extortion.

DESCRIPTION

Subsection (c):

A person who

1. intentionally threatens
 - a. to disclose a private image
 - b. or to decline to delete, remove, or retract a previously disclosed private image of the victim or of an immediate family member of the victim
2. to compel or attempt to compel the victim or an immediate family member of the victim to
 - a. do any act or
 - b. refrain from doing any act against the victim's will
3. with the intent to obtain
 - a. additional private images or
 - b. anything else of value or
 - c. any acquittance, advantage, or immunity,
4. and the victim is
 - a. a minor or
 - b. an individual with a disability
5. and the person is an adult at the time of the offense.

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.

Blackmailing is a Class 1 misdemeanor. (G.S. 14-118)

Extortion is a Class F felony. (G.S. 14-118.4)

Cyberstalking is a Class 2 Misdemeanor. (G.S. 14-196(d))

Aggravated assault on an individual with a disability is a Class F felony. (G.S. 14-32.1)

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. 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.

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.16. First degree sexual exploitation of a minor.

DESCRIPTION

Subdivision (a)(5):

A person who

1. creates for sale or pecuniary gain
2. material created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity.

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.

First-degree sexual exploitation of a minor (related to a minor engaging in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity) is a Class C Felony. (G.S. 14-190.16(a)(1)-(4))

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. 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.

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.16. First degree sexual exploitation of a minor.

DESCRIPTION

Subdivision (a)(6):

A person who

1. creates for sale or pecuniary gain
2. a child sex doll of an identifiable minor.

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.

First-degree sexual exploitation of a minor (related to a minor engaging in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity) is a Class C Felony. (G.S. 14-190.16(a)(1)-(4))

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. 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.

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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 591 – Modernize Sex Crimes [Ed. 3] (cont'd)

STATUTE

§ 14-190.17. Second degree sexual exploitation of a minor.

DESCRIPTION

Subdivision (a)(2):

A person who

1. distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits,
2. material that has been created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity.

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.

Second-degree sexual exploitation of a minor (distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity) is a Class E felony. (G.S. 14-190.17)

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 C felony. 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.

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.17. Second degree sexual exploitation of a minor.

DESCRIPTION

Subdivision (a)(3):

A person who

1. distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits
2. a child sex doll.

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.

Second-degree sexual exploitation of a minor (distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity) is a Class E felony. (G.S. 14-190.17)

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 or a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

Note: The current offenses in G.S. 14-190.17 are inconsistent with the Offense Classification Criteria for a Class E felony as well.

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.17A. Third degree sexual exploitation of a minor.

DESCRIPTION

Subsection (a):

A person who

1. knowing the character or content of the material,
2. possesses
 - a. a child sex doll or
 - b. material that has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual activity.

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.

Third degree sexual exploitation of a minor (possess material that contains a visual representation of a minor engaging in sexual activity) is a Class H felony. (G.S. 14-190.17A)

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: HB 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.17C. Obscene visual representation of sexual exploitation of a minor.

DESCRIPTION

Subdivision (a):

A person who

1. knowingly produces, distributes, receives, or possesses with intent to distribute
2. material that
 - a. depicts a minor engaging in sexual activity, and
 - b. is obscene.

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.

This bill amends G.S. 14-190.13 by adding subsection (3a) to define “obscene.”

Second degree sexual exploitation of a minor (develops, receives, sells, purchases, or exchanges material that contains a visual representation of a minor engaged in sexual activity) is a Class E felony. (G.S. 14-190.17(a)(2))

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 or a Class F felony. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious long-term personal injury or in serious long-term or widespread societal injury as Class C felonies. The Sentencing Commission classified offenses which reasonably tend to result or do result in significant personal injury or serious societal injury as Class F felonies.

DATE OF REVIEW: 06/07/2024

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.17C. Obscene visual representation of sexual exploitation of a minor.

DESCRIPTION

Subdivision (b):

A person who

1. knowingly possesses
2. material that
 - a. depicts a minor engaging in sexual activity, and
 - b. is obscene.

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.

This bill amends G.S. 14-190.13 by adding subsection (3a) to define “obscene.”

Third degree sexual exploitation of a minor (possessing material containing visual representations of a minor engaging in sexual activity) is a Class H felony. (G.S. 14-190.17A(a))

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: HB 591 – Modernize Sex Crimes [Ed. 3] (cont'd)

STATUTE

§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.

DESCRIPTION

Subdivision (a)(3):

A person who

1. is 16 years of age or older
2. knowingly, with the intent to commit an unlawful sex act,
3. entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission,
4. a person the defendant believes to be the parent, guardian, or caretaker of child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant,
5. to meet with the defendant or any other person
6. for the purpose of committing an unlawful sex act.

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.

Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act is a Class H felony. (G.S. 14-202.3(a)(1))

Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act (with a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant) is a Class H felony. (G.S. 14-202.3(a)(2))

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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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 591 – Modernize Sex Crimes [Ed. 3] (cont'd)

STATUTE

§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.

DESCRIPTION

Subdivision (a)(3):

A person who

1. is 16 years of age or older
2. knowingly, with the intent to commit an unlawful sex act,
3. entices, advises, coerces, orders, or commands, by means of a computer or any other device capable of electronic data storage or transmission,
4. a person the defendant believes to be the parent, guardian, or caretaker of child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant,
5. to meet with the defendant or any other person
6. for the purpose of committing an unlawful sex act,
7. and the defendant, or any other person for whom the defendant was arranging the meeting, actually appears at the meeting location.

PROPOSED OFFENSE CLASS

Class G felony.

ANALYSIS

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

Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act is a Class G felony if the defendant, etc., actually appears at the meeting location. (G.S. 14-202.3(a)(1))

Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act (with a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant) is a Class G felony if the defendant, etc., actually appears at the meeting location. (G.S. 14-202.3(a)(2))

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. 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.

Note: The current offenses in G.S. 14-202.3 that are Class G felonies are inconsistent with the Offense Classification Criteria for a Class G felony as well.

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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 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.5A. Disclosure of private images; civil action.

DESCRIPTION

Subsections (b), (c)(1):

A person who does all of the following:

1. knowingly discloses an image of another person with the intent to either:
 - a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
2. The depicted person is identifiable from the disclosed image itself or information offered in connection with the image.
3. The depicted person's intimate parts are or are realistically depicted to be exposed or the depicted person is or is realistically depicted to be engaged in sexual conduct in the disclosed image.
4. The person discloses the image without the affirmative consent of the depicted person.
5. The person obtained, created, adapted, or modified the image without consent of the depicted person or under circumstances such that the person knew or should have known that the depicted person expected the images to remain private.

PROPOSED OFFENSE CLASS

Class H felony.

ANALYSIS

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

FINDINGS



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



Bill is **inconsistent** with 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: HB 591 – Modernize Sex Crimes [Ed. 3] (cont’d)

STATUTE

§ 14-190.5A. Disclosure of private images; civil action.

DESCRIPTION

Subsections (b), (c)(3):

A person who does all of the following:

1. knowingly discloses an image of another person with the intent to either:
 - a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
 - b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
2. The depicted person is identifiable from the disclosed image itself or information offered in connection with the image.
3. The depicted person's intimate parts are or are realistically depicted to be exposed or the depicted person is or is realistically depicted to be engaged in sexual conduct in the disclosed image.
4. The person discloses the image without the affirmative consent of the depicted person.
5. The person obtained, created, adapted, or modified the image without consent of the depicted person or under circumstances such that the person knew or should have known that the depicted person expected the images to remain private.

PROPOSED OFFENSE CLASS

Class H felony for second or subsequent offense by person under the age of 18 at time of offense.

ANALYSIS

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

The first offense by a minor is a Class 1 misdemeanor. (G.S. 14-190.5A(c)(2))

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

DATE OF REVIEW: 06/07/2024

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

IMPACT ANALYSIS

May 13, 2024

BILL NUMBER: H591-CSCE-37 [v.3]

SHORT TITLE: Modernize Sex Crimes.

Estimated Prison Population Impact¹

This bill establishes new felony and misdemeanor offenses, as well as expands the scope of existing felony offenses for sex crimes.

Section 1.

Creates G.S. 14-202.7., sexual extortion; aggravated sexual extortion, establishing the offense of sexual extortion in subsection (b) and aggravated sexual extortion in subsection (c).

Under G.S. 14-202.7(b), sexual extortion is when a person intentionally threatens to disclose a private image, or to decline to delete, remove, or retract a previously disclosed private image, of the victim or of an immediate family member of the victim in order to compel or attempt to compel the victim or an immediate family member of the victim to do any act or refrain from doing any act against the victim's will, with the intent to obtain additional private images or anything else of value or any acquittance, advantage, or immunity. The violation of the offense depends on the ages of the offender:

- It is a class F felony if the offender is an adult at the time of the offense.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	2	2	2	2
20	11	18	19	19	19

¹ A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

- It is a Class 1 misdemeanor if the offender is a minor at the time of the offense and it is the first offense.

Since the proposed bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this proposed change on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 36% of Class 1 misdemeanor convictions resulted in active sentences, with an average sentence length of 40 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, convictions for this proposed offense would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

- It is a Class F felony for a second or subsequent offense by a person who is a minor at the time of the offense.

It is not known how many offenders will be repeat offenders under the proposed statute. In FY 2022, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	2	2	2	2
20	11	18	19	19	19

Under G.S. 14-202.7(c), aggravated sexual extortion is when a person intentionally threatens to disclose a private image, or to decline to delete, remove, or retract a previously disclosed private image, of the victim or of an immediate family member of the victim in order to compel or attempt to compel the victim or an immediate family member of the victim to do any act or refrain from doing any act against the victim's will, with the intent to obtain additional private images or anything else of value or any acquittance, advantage, or immunity, and the victim is a minor or an individual with a disability and the person is an adult at the time of the offense. Violation is a Class E felony.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 57% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	24	29	30	30

Some of this conduct in subsections (b) and (c) of G.S. 14-202.7 may currently be covered by G.S. 14-458.1, cyber-bullying, in subsection (2) making it unlawful for a person, with the intent to intimidate or torment a minor or the minor's parent or guardian, to post a real or doctored image of a minor on the Internet. A violation for this offense is a Class 1 misdemeanor if the defendant is 18 years of age or older at the time the offense is committed. However, it is a Class 2 misdemeanor if the defendant is under the age of 18 at the time the offense is committed. Given the similarities to the proposed offenses it is possible that conduct currently convicted under cyberbullying may become convictions under sexual extortion or aggravated sexual extortion. In FY 2022, there were no convictions under G.S. 14-458.1, subsection (2).

Section 2.(b)

Amends G.S. 14-190.16, first degree sexual exploitation of a minor, by adding two new subsections thereby expanding the scope of conduct for which an offender can be charged under this offense. First, subsection (5) makes it a Class D felony for a person to create for sale or pecuniary gain material created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. Under Structured Sentencing, all Class D offenders are required to receive an active sentence.² In FY 2022, the average estimated time served for an offender convicted of a Class D offense was 64 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there was 1 conviction (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
1	1	2	3	4	5
20	21	41	62	82	103

Second, subsection (6) makes it a Class C felony for a person to create for sale or pecuniary gain a child sex doll of an identifiable minor.

There were 10 convictions for the Class C felony, first degree sexual exploitation of a minor, in FY 2022. It is not known how many additional offenders might be convicted and sentenced for this new offense.

² If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

Under Structured Sentencing, all Class C offenders are required to receive an active sentence.³ In FY 2022, the average estimated time served for an offender convicted of a Class C offense was 86 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there was 1 additional conviction (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
1	1	2	3	4	5
20	21	41	62	82	103

Section 2.(c)

Amends G.S. 14-190.17, second degree sexual exploitation of a minor, by expanding the activity described in subsection (2) and adding a new subsection (3), which provides additional conduct an offender can be charged under this offense. The expanded language in subsection (2) would provide that a person who distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that has been created, adapted, or modified to appear that an identifiable minor is engaged in sexual activity is guilty of a Class E felony.

There were 104 convictions for the Class E felony, second degree sexual exploitation of a minor, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 57% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	24	29	30	30

The new subsection (3) makes it a Class E felony for a person to distribute, transport, exhibit, receive, sell, purchase, exchange, or solicit a child sex doll.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 57% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of

³ If extraordinary mitigation is found, the court may impose an intermediate punishment when only an active punishment is authorized. G.S. § 15A-1340.13(g) and (h).

post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	24	29	30	30

Section 2.(d)

Amends G.S. 14-190.17A, third degree sexual exploitation of a minor, by adding language regarding possession of a child sex doll and identifiable minors. Under these changes, it would be a Class H felony for a person if, knowing the character or content of the material, possesses a child sex doll or material that has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual activity.

There were 74 convictions for the Class H felony, third degree sexual exploitation of a minor, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Section 2.(e)

Creates two new felony offenses under G.S. 14-190.17B., obscene visual representation of sexual exploitation of a minor. First, subsection (a) makes it a Class E felony for any person to knowingly produce, distribute, receive, or possess with intent to distribute material that meets both of the following criteria: (1) depicts a person with the features of or features that resemble those of a minor engaging in sexual activity and (2) is obscene.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 57% of Class E convictions resulted in active sentences, with an average estimated time served of 27 months. Twelve months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2

convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	3	3	3	3
20	12	24	29	30	30

Second, subsection (b) makes it a Class H felony for any person to knowingly possess material that meets both of the following criteria: (1) depicts a person with the features of or features that resemble those of a minor engaging in sexual activity and (2) is obscene.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Section 2.(f)

Amends G.S. 14-202.3, solicitation of child by computer or certain other electronic devices to commit an unlawful sex act, by adding subsection (3). The new subsection (3) requires that the transmission be to a person the defendant believes to be the parent, guardian, or caretaker of a child who is less than 16 years of age and who the defendant believes to be at least five years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act.

Under this offense, a violation is a Class H felony, unless the defendant or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location and then it is a Class G.

There were 12 convictions for the Class H felony, solicit child by computer, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of

active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

There were 6 convictions for the Class G felony, solicit child by computer and appear, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 39% of Class G convictions resulted in active sentences, with an average estimated time served of 15 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 3 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
3	1	2	2	2	2
20	9	14	14	14	14

Section 3.(a)

Amends G.S. 14-208.6, Definitions, subsection (5), the definition of a sexually violent offense, to include the new offenses created by this bill in G.S. 14-190.17B, obscene visual representation of sexual exploitation of a minor. Under G.S. 14-208.6A and -208.6B, a person convicted of a sexually violent offense is required to register as with the Sex Offender and Public Protection Registration Program. Under G.S. 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest, a person who is required to register and fails to comply with the requirements is guilty of a Class F felony.

There were 70 convictions for the Class F felony, fail to register as a sex offender, and 228 convictions for the Class F felony, fail to report new address as a sex offender, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 51% of Class F convictions resulted in active sentences, with an average estimated time served of 18 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 2 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
2	1	2	2	2	2
20	11	18	19	19	19

Section 3.(c)

Amends G.S. 14-208.18, sex offender unlawfully on premises, which prohibits persons required to register under this Article, as described in subsection (c), to be present at certain locations unless certain criteria are met. Expanding the scope of the offense, the bill modifies subsection (c) to include the new offenses created by this bill in G.S. 14-190.17B, obscene visual representation of sexual exploitation of a minor. A violation of this section is a Class H felony.

There were 40 convictions for the Class H felony, sex offender unlawfully on premises, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Section 4

Amends G.S. 14-190.5A, disclosure of private images; civil action, by expanding the scope of the offenses in subdivision (b)(3) to include images of a person's intimate parts that are realistically depicted to be exposed or engaged in sexual conduct, and subdivision (b)(4) to include a person who creates, adapts, or modifies an image without consent. Violation is a Class H felony if the person is 18 years of age or older at the time of the offense; a Class 1 misdemeanor if the person is under 18 years of age at the time of the offense and it is their first offense; a Class H felony if the person is under 18 at the time of the offense and it is their second or subsequent offense.

There were 20 convictions for the Class H felony, disclosure of private images by an adult, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

There was 1 conviction for the Class 1 misdemeanor, disclosure of private images by a minor, in FY 2022. It is not known how many additional convictions may result from the proposed broadening of the current statute. In FY 2022, 36% of Class 1 misdemeanor convictions resulted in active sentences, with an average sentence length of 40 days. Structured Sentencing misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days). Therefore, additional convictions that result from the proposed broadening of the current statute would not be expected to have an impact on the prison population. The impact on local jail populations and the Statewide Misdemeanant Confinement Program is not known.

There were no convictions for the Class H felony, disclosure of private images by a minor (2nd or subsequent offense), in FY 2022. It is not known how many convictions may result from the proposed broadening of the current statute. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 additional convictions (threshold) or 20 additional convictions (example) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Effective December 1, 2024, and applies to offenses committed on or after that date.

DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2022 Structured Sentencing Simulation Data

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 1070 – Property Rights and Protections [Ed. 1]

STATUTE

§ 14-127. Willful and wanton injury to real property.

DESCRIPTION

A person who:

1. willfully and wantonly
2. damages, injures, or destroys
3. the residential real property of another
4. and that damage, injury, or destruction results in damages valued at \$500.00 or more.

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.

Willful and wonton injury to real property is a Class 1 misdemeanor regardless of amount. (G.S. 14-127) If the damages to residential real property are valued at less than \$500, it would be a Class 1 misdemeanor under the existing offense.

The Sentencing Commission reviewed a substantially similar provision in May 2024 in HB 966/SB 886 [Ed. 1] (the damages were valued at \$1,000 or more) which was proposed as a Class H felony and found it to be consistent with a Class H 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: 06/07/2024

BILL CONTINUED ON NEXT PAGE

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 1070 – Property Rights and Protections [Ed. 1] (cont'd)

STATUTE

§ 14-117.8. Fraudulently renting, leasing, or advertising for sale of residential real property.

DESCRIPTION

Subsection(a):

A person who

1. unlawfully rents or leases
2. residential real property
3. to another person
4. knowing that the renter or lessor has no lawful ownership in the property or leasehold interest in the property.

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.

Obtaining property by false pretenses is a Class C felony if the thing of value is \$100,000 or more and a Class H felony if the thing of value is less than \$100,000. (G.S. 14-100(a))

The Sentencing Commission reviewed an identical provision in May 2024 in HB 966/SB 886 [Ed. 1] which was proposed as a Class C felony and found it to be inconsistent with the Offense Classification Criteria for a Class C felony with a note stating it would be consistent with the Offense Classification Criteria for a Class C and H felony if the amount involved was \$100,000 or more, or less than \$100,000, respectively.

FINDINGS



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



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



Offense Classification Criteria are not applicable.

DATE OF REVIEW: 06/07/2024

BILL CONTINUED ON NEXT PAGE

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 1070 – Property Rights and Protections [Ed. 1] (cont’d)

STATUTE

§ 14-117.8. Fraudulently renting, leasing, or advertising for sale of residential real property.

DESCRIPTION

Subsection(b):

A person who

1. unlawfully lists or advertises
2. residential real property for sale
3. knowing that the purported seller has no legal title or authority to sell the property.

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.

Aiding or assisting in filing fraudulent tax returns is a Class H felony. (G.S. 105-236(a)(9a)(c.))

The Sentencing Commission reviewed a substantially similar provision in May 2024 in HB 966/SB 886 [Ed. 1] (unlawfully lists or advertises residential real property for rent, lease, or sale) which was proposed as a Class H felony and found it to be consistent with the Offense Classification Criteria for a Class H felony.

FINDINGS

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

Bill is **inconsistent** with 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. 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.

DATE OF REVIEW: 06/07/2024

IMPACT ANALYSIS ON NEXT PAGE

NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

IMPACT ANALYSIS

May 16, 2024

BILL NUMBER: HB 1070 [v.1]

SHORT TITLE: Property Rights and Protections.

Estimated Prison Population Impact⁴

Section 3. This section amends G.S. 14-127, Willful and wanton injury to real property, by adding one new felony offense. It is currently a Class 1 misdemeanor for a person to willfully and wantonly damage, injure, or destroy any real property whatsoever, either of a public or private nature. This amendment makes it unlawful for any person to willfully and wantonly damage, injure, or destroy the residential real property of another, and that damage, injury, or destruction results in damages valued at \$500.00 or more. A violation is a Class I felony.

There were 534 convictions for the Class 1 misdemeanor in G.S. 14-127, injury to real property, in FY 2022. It is not known how many of these convictions involved residential real property and damage valued at \$500.00 or more and would be convicted of the new Class I felony. In FY 2022, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 10 convictions (threshold) or 20 convictions (example), or 53 convictions (10% scenario) per year as a result of the proposed change. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
10	1	2	2	2	2
20	3	4	4	4	4
53	6	10	10	11	11

Section 4. This section creates two new felony offenses as part of G.S. 14-117.8, Fraudulently renting, leasing, or advertising for sale of residential real property.

Subsection (a) makes it unlawful to rent or lease residential real property to another person knowing that the rentor or lessor has no lawful ownership in the property or leasehold interest in the property. A violation is a Class H felony.

⁴ A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 33% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 4 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
4	1	2	2	2	2
20	7	11	11	11	11

Subsection (b) makes it unlawful to list or advertise residential real property for sale knowing that the purported seller has no legal title or authority to sell the property. A violation is a Class I felony.

Since the proposed subsection creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for this new offense. In FY 2022, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 6 months. Nine months of post-release supervision is required upon release from prison following an active sentence or revocation of probation. The following table shows the estimated annual impact if, for example, there were 10 convictions (threshold) or 20 convictions (example) for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as estimated growth rates in convictions.

# Convictions	Estimated Prison Bed Impact				
	Year 1	Year 2	Year 3	Year 4	Year 5
10	1	2	2	2	2
20	3	4	4	4	4

Effective December 1, 2024, and applies to offenses committed on or after that date.

DATA SOURCE: NC Sentencing and Policy Advisory Commission, FY 2022 Structured Sentencing Simulation Data