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Jeff Welty

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OVERCRIMINALIZATION IN NORTH CAROLINA*

JEFF WELTY**

Overcriminalization has received considerable attention—academic and otherwise—in recent years. But most of this attention has focused on the federal criminal code, even though the vast majority of criminal prosecutions in the United States happen in state courts. This Article is the first to provide a detailed assessment of the scope and growth of the criminal law in a single state. It uses several different approaches to measure the growth of the criminal law in North Carolina, and concludes that the criminal law is growing and becoming more severe despite occasional significant examples of decriminalization or reduction in punishment severity. It then attempts to assess whether this growth is appropriate or is the result of overcriminalization and finds that North Carolina does suffer from overcriminalization, though not necessarily more so than other states. The Article briefly explains some of the forces that led to the expansion of North Carolina’s criminal code, and proposes several ways to address overcriminalization.

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INTRODUCTION

The topic of overcriminalization has received considerable attention in recent years. Academics have argued that “the most pressing problem with the criminal law today is that we have too much of it,”¹ that the past several decades have witnessed “a punishment binge of unprecedented size and scope,”² and that there is a “wide consensus that overcriminalization is a serious problem.”³ A prominent federal judge has written that the proliferation of criminal laws has created “ubiquitous criminality,” a situation in

1. DOUGLAS HUSAK, *OVERCRIMINALIZATION* 3 (2008).

2. Erik Luna, *The Overcriminalization Phenomenon*, 54 AM. U. L. REV. 703, 710 (2005).

3. Stephen F. Smith, *Overcoming Overcriminalization*, 102 J. CRIM. L. & CRIMINOLOGY 537, 537 (2012).

which “most Americans are criminals and don’t know it, or suspect they are but believe they’ll never get prosecuted.”⁴ Congress has held several hearings on overcriminalization in the past few years.⁵

Virtually all the discussion of overcriminalization has focused on the federal government,⁶ even though the vast majority of criminal prosecutions in the United States happen in state courts.⁷ This Article is the first to provide a detailed assessment of the scope and growth of the criminal law in a single state, North Carolina.⁸

4. Alex Kozinski & Misha Tseytlin, *You’re (Probably) a Federal Criminal*, in *IN THE NAME OF JUSTICE* 43, 44–45 (Timothy Lynch ed., 2009).

5. The House of Representatives Judiciary Committee formed an Over-Criminalization Task Force in 2013, which conducted several hearings. See Press Release, H.R. Judiciary Comm., House Judiciary Comm. Reauthorizes Bipartisan Over-Criminalization Task Force (Feb. 5, 2014), available at <http://judiciary.house.gov/index.cfm/2014/2/house-judiciary-committee-reauthorizes-bipartisan-over-criminalization-task-force>. In 2010, the House of Representatives Judiciary Committee Subcommittee on Crime, Terrorism, and Homeland Security conducted a hearing. See generally *Reining in Overcriminalization: Assessing the Problem, Proposing Solutions: Hearing Before the H. Subcomm. On Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111th Cong. (2010).

6. See, e.g., Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223, 231 (2007) (“While many complaints about overcriminalization point to state codes, much critical literature focuses on federal criminal law.”); Gary Fields & John R. Emshwiller, *As Criminal Laws Proliferate, More Ensnared*, WALL ST. J., July 23–24, 2011, at A1 (reporting on several seemingly overreaching federal prosecutions and stating that in the last few decades, “the federal justice system has dramatically expanded its authority and reach,” making it “increasingly easy for Americans to end up on the wrong side of the law”); BRIAN W. WALSH & TIFFANY M. JOSLYN, HERITAGE FOUND. & NAT’L ASS’N OF CRIM. DEF. LAWYERS, WITHOUT INTENT: HOW CONGRESS IS ERODING THE CRIMINAL INTENT REQUIREMENT IN FEDERAL LAW, X (2010), available at http://s3.amazonaws.com/thf_media/2010/pdf/WithoutIntent_lo-res.pdf (“Congress is criminalizing everyday conduct at a reckless pace.”).

7. Over twenty million criminal cases were initiated in state courts in 2010. See Court Statistics Project, *Criminal Caseloads Continue to Decline*, COURTSTATISTICS.ORG, <http://www.courtstatistics.org/Criminal/20121Criminal.aspx> (last visited Aug. 29, 2014). Just over 63,000 criminal cases were filed in United States District Courts in 2012, together with over 79,000 cases filed before federal magistrate judges. DEP’T OF JUSTICE, FISCAL YEAR 2012: UNITED STATES ATTORNEYS’ ANNUAL STATISTICAL REPORT 6, 12 (2012), available at http://www.justice.gov/usao/reading_room/reports/asr2012/12statrpt.pdf.

8. Overcriminalization at the state level has not been completely ignored but typically is mentioned in passing or illustrated anecdotally. See, e.g., Luna, *supra* note 2, at 704 (noting that “Delaware punishes by up to six months imprisonment the sale of perfume or lotion as a beverage” and citing several other isolated examples of overcriminalization in the states). Even what might be the most extended discussion of overcriminalization at the state level was primarily limited to counting the growth in the number of words in the Illinois Criminal code over time. See Paul H. Robinson & Michael T. Cahill, *Can a Model Penal Code Second Save the States from Themselves?*, 1 OHIO ST. J. CRIM. L. 169, 172–73 (2003).

The Article proceeds in four parts. Part I uses multiple approaches to measure the growth of the criminal law in North Carolina and concludes that the criminal law is expanding, even after accounting for several significant examples of decriminalization or reduction in punishment severity. Part II assesses whether the growth is an appropriate response to new forms of criminality or is the result of overcriminalization, and finds that North Carolina does suffer from overcriminalization, though not necessarily more so than other states. Part III explains why North Carolina's criminal code has expanded, and Part IV proposes several ways to address overcriminalization.

I. MEASURING THE GROWTH OF THE CRIMINAL LAW IN NORTH CAROLINA

The first step in determining whether North Carolina suffers from overcriminalization is to describe the scope of the state's criminal law. However, there is no established metric for quantifying how much conduct a criminal code reaches, or for determining whether one jurisdiction prohibits more conduct than another.⁹ Furthermore, "overcriminalization" encompasses several distinct concerns, including (a) whether too much conduct is declared to be criminal, (b) whether the criminal code is too extensive or detailed to be remembered and followed, and (c) whether too many people are incarcerated or otherwise punished through the criminal justice system.¹⁰

Because there is no single, ideal measure that captures the extent of a state's criminal law, this section examines several imperfect ones. Together, they paint a picture of a criminal code that is growing larger, more punitive, and more complex, and that is affecting more and more people.

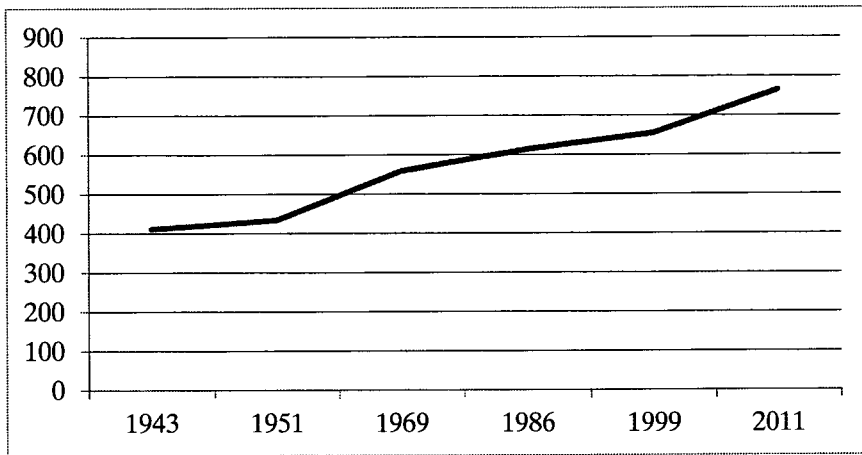
9. HUSAK, *supra* note 1, at 8 ("[D]ata about the growth of the substantive criminal law are much harder to present and evaluate. The extent of criminalization (and thus of overcriminalization) is largely a function of the breadth or reach of the criminal law, and we have no simple way to measure this variable at a given time or place. That is, no statistic can express whether or to what extent one jurisdiction criminalizes more or less than another.").

10. See, e.g., Sara Sun Beale, *The Many Faces of Overcriminalization: From Morals and Mattress Tags to Overfederalization*, 54 AM. U. L. REV. 747, 748-49 (2005) (noting the multiple "facets" and "forms" of overcriminalization); Roger A. Fairfax, Jr., *From "Overcriminalization" to "Smart on Crime": American Criminal Justice Reform—Legacy and Prospects*, 7 J. L. ECON. & POL'Y 597, 608-09 (2011) (noting that "overcriminalization may mean many different things to different people" and identifying five related concerns that fall under its umbrella).

A. *Change in the Number of Sections in the Criminal Code*

Chapter 14 of North Carolina's General Statutes is entitled *Criminal Law*.¹¹ Although many criminal statutes exist outside of Chapter 14, like certain motor vehicle offenses in Chapter 20 and the drug laws in Chapter 90, Chapter 14 is the heart of the state's criminal law. It is therefore significant that Chapter 14 has grown substantially over the years. Figure 1 summarizes its expansion since World War II.¹²

Figure 1: Number of Sections in Chapter 14 of the General Statutes



Over the past seventy years, the number of sections in Chapter 14 has increased at a rate of over five new sections per year. Cumulatively, the number of sections in the criminal code has almost doubled.

Counting the number of sections in Chapter 14 understates the extent to which the criminal code has grown over the years for at least two reasons. First, many of the sections themselves have grown, often

11. See N.C. GEN. STAT. ch. 14 (2013).

12. The author manually counted the number of sections in Chapter 14 at different times. The data points represented in the chart are: 1943, 411 sections; 1951, 434 sections; 1969, 559 sections; 1986, 614 sections; 1999, 655 sections; and 2011, 765 sections. The selected years were chosen mostly because they were years in which new editions of Chapter 14 were published with up-to-date tables of contents. The variance between the number of years that passed before new editions of Chapter 14 were published results in uneven spacing along the X axis of Figure 1, and consequently, this chart should be viewed only to show the general upward trend in the addition of criminal laws over the past sixty-seven years, rather than as a visual representation of the specific trends between years.

through the addition of new subsections defining additional crimes. For example, from 1986 to 2011 the number of sections in Chapter 14 grew just under 25%,¹³ while over a similar time span the number of words in Chapter 14 grew approximately 76%.¹⁴ Second, the above data do not capture the new crimes that have been enacted outside of Chapter 14, even though an examination of the past six legislative sessions, from 2008 through 2013, reveals that more crimes were created in other chapters than in Chapter 14.¹⁵ Some of the crimes outside Chapter 14 are especially broad because they incorporate administrative regulations and make violations of those regulations criminal offenses.¹⁶

Of course, counting code sections is an imperfect way of assessing criminalization. Some statutes define multiple crimes, while others contain just one. Some statutes are narrowly drawn and rarely applied, while others are sweeping and significant.¹⁷ Still, because more sections generally mean more crimes, the rising number of statutory sections is an important data set when considering the extent of criminalization in North Carolina.

13. Increasing from 614 sections in 1986 to 765 in 2011, a 24.6% increase.

14. Increasing from 106,690 words in 1986 to 187,727 in 2013. This is not quite an apples-to-apples comparison with the growth in sections, as one time period ends in 2011 and the other ends in 2013. Still, the time period is roughly comparable and illustrates the point that sections are growing longer in addition to becoming more numerous.

15. Appendix I lists the new crimes created in the legislative sessions between 2008 and 2013. *See infra* app. I. During that time, 91 new crimes were enacted in Chapter 14, while 112 crimes were enacted in the other 167 chapters of the General Statutes. *See* N.C. GEN. STAT. chs. 1–168 (2013); *see also infra* app. I. Three crimes the North Carolina Legislature created in 2012 involve provisions both inside and outside of Chapter 14 and were excluded from this comparison. *See* Act of Jan. 4, 2012, ch. 12, § 1(d), 2012 N.C. Sess. Laws 26, 46–47 (codified at N.C. GEN. STAT. § 14-288.20A (2013)).

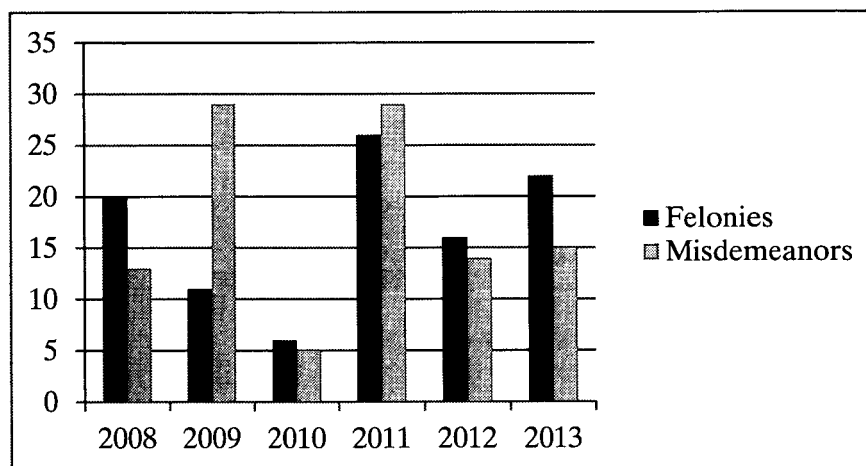
16. For example, section 130A-25 of the North Carolina General Statutes makes it a misdemeanor to violate any administrative regulation concerning public health, N.C. GEN. STAT. § 130A-25 (2013), while section 106-196 makes it a misdemeanor to violate any administrative regulation concerning the marketing and branding of farm products, *id.* § 106-196. Similarly, section 90-48 makes it a misdemeanor to violate any administrative regulation promulgated by the Board of Dental Examiners. *Id.* § 90-48. Thus, a dentist who runs an advertisement but neglects to include a statement regarding whether he or she is a general dentist or a specialist is a criminal, 21 N.C. ADMIN. CODE 16P .0102 (2014), as is one who permits a dental hygienist to engage in the “[i]ntraoral use of a high speed handpiece,” 21 N.C. ADMIN. CODE 16G .0103(14) (2014).

17. *Compare, e.g.*, N.C. GEN. STAT. § 14-33 (2013) (defining multiple, frequently charged assault crimes, including the broad offenses of simple assault and assault on a female), *with id.* § 14-29 (defining a single, narrow, and rarely charged crime, castration without malice aforethought).

B. Recent Enactment of New Crimes

Looking at the number of new crimes created each year provides another perspective on the growth of the criminal law in North Carolina. Figure 2 presents data on the number of new felonies and new misdemeanors enacted in each of the past six legislative sessions.¹⁸ It includes information only about crimes created by the General Assembly; although local ordinance violations typically are misdemeanors in North Carolina,¹⁹ no effort has been made to compile or to count the number of new crimes created by local governments each year. Detailed information about the crimes created in each session is presented in Appendix I to this Article.

Figure 2: New Crimes in North Carolina, 2008–2013



18. See *infra* app. I. North Carolina's legislature alternates between "long sessions," in odd-numbered years, during which the General Assembly may take up nearly any matter, and "short sessions," in even-numbered years, during which the legislature is focused mainly on the state budget. See N.C. CONST. art. II, § 11; N.C. GEN. STAT. § 120-11.1 (2013); see also Ron Snell, *State Experiences with Annual and Biennial Budgeting*, National Conference of State Legislatures (Apr. 2011), <http://www.ncsl.org/research/fiscal-policy/state-experiences-with-annual-and-biennial-budgeti.aspx> ("North Carolina staff reported that the legislature spent proportionately more time on the budget in its short session, due to the brevity of the session—three months—and the restrictions on carry-over and new bills."). In theory, at least, fewer new criminal statutes should be enacted in short sessions. The six-year period used to generate the chart contains three of each type of session, meaning that the resulting data are not biased by the inclusion of more long sessions or more short sessions.

19. N.C. GEN. STAT. § 14-4(a) (2013) (making most ordinance violations Class 3 misdemeanors).

In the study period, the General Assembly enacted 101 new felonies, an average of 16.8 per year. It also enacted 105 new misdemeanors, an average of 17.5 per year. Across both types of crimes, the total was 206 new offenses, a rate of 34.3 per year.²⁰

The total number of criminal offenses in North Carolina is unknown,²¹ so it is not possible to calculate a growth rate based on this data. However, it is worth noting that the legislature is creating new offenses much more quickly than it is creating new sections in Chapter 14,²² reinforcing the fact that simply measuring the growth in code sections understates the rate of growth in the criminal law.

Just as counting the number of sections in Chapter 14 is not a perfect measure of the growth of the criminal law, neither is counting new crimes. It is sometimes difficult to determine exactly how many new crimes a bill creates;²³ some new crimes replace existing crimes,²⁴ meaning that not all new crimes represent an expansion of the criminal law; and some new crimes are broad and severe while others are narrowly drawn and carry lesser sanctions. Still, the pace of crime creation is noteworthy, and will be placed in additional context later in this Article.

20. See *infra* app. I. Calculations done by author.

21. The Administrative Office of the Courts tracks over 1,300 different offenses. See N.C. Admin. Office of the Courts, 2012 Offense Statistics Data Set (on file with author). However, because the AOC's system is built to track actual cases, offenses that are never charged are not tracked. See *id.* Furthermore, the AOC system may combine offenses that are legally distinct from one another but that are defined in the same statute and carry the same punishment, as there is no administrative reason to separate such offenses. See *id.* Finally, the database includes some noncriminal traffic infractions and local ordinance violations, which are not relevant to the number of crimes under state law. See *id.* Therefore, the AOC's tracking classifications provide a ballpark figure for the number of criminal offenses in North Carolina but are not a precise count.

22. Since 1943, just over five new sections have been added to Chapter 14 each year, on average. See *supra* notes 11–16 and accompanying text.

23. Counting difficulties often arise when a statute makes a variety of actions criminal without specifying whether those actions are distinct offenses or part of a single larger offense. See, e.g., Act of Jan. 28, 2009, ch. 551, 2009 N.C. Sess. Laws 1510, 1510–11 (codified at N.C. GEN. STAT. § 14-458.1 (2013)) (enacting an especially perplexing statute regarding cyberbullying that covers many different acts without clarifying whether the acts are different offenses or different ways of committing a single offense while imposing different punishments depending on the age of the defendant).

24. An example of a bill that repeals an existing crime while creating a new one is Session Law 2008-167, Act of Mar. 20, 2008, ch. 167, 2008 N.C. Sess. Laws (codified at N.C. GEN. STAT. § 14-277.3A (2013)), which repealed North Carolina's former stalking statute and replaced it with a new stalking statute, see *id.* (repealing and replacing the former stalking statute, N.C. GEN. STAT. § 14-277.3 (2007)).

C. *Reclassification of Crimes*

Another way to assess the expansion of the criminal law is to examine legislation that reclassifies existing offenses. While bills that create new crimes expand the scope of the criminal law, bills that increase the penalty for existing crimes increase the severity of the criminal law. Bills that reduce the penalty for existing crimes have the converse effect. The data presented below show that increases in punishment are more frequent in North Carolina than decreases in punishment, meaning that the overall effect of crime reclassification is towards greater criminalization.

North Carolina law groups offenses into classes by severity, with felony offenses ranging from Class A, the most serious, to Class I, the least serious. Misdemeanor offenses, in order of descending seriousness, are classified as Class A1, Class 1, Class 2, or Class 3.²⁵ Thus, a crime is “upgraded” when it moves from a Class H felony to a Class F felony. A crime is “downgraded” when it moves from a Class 1 misdemeanor to a Class 3 misdemeanor. Appendix II contains detailed information about each reclassification in the past six legislative sessions.²⁶ The data may be summarized as follows:

Figure 3: Summary of Crime Reclassification, 2008–2013

Year	Upgrades	Downgrades
2008	10	1
2009	1	1
2010	4	1
2011	5	2
2012	5	0
2013	19	21
Total	44	26

25. See N.C. GEN. STAT. § 15A-1340.17, -1340.23 (2013) (setting out sentencing system for felonies and misdemeanors based on offense class).

26. As with the crime-creation data discussed above, counting reclassifications presented occasional judgment calls, and reasonable minds could differ about some of the counting decisions made in Appendix II.

As Figure 3 demonstrates, there were 69% more upgrades than downgrades in the study period. This is so even though the study period includes a historical anomaly with respect to the frequency of downgrades, as it encompasses the 2013 legislative session. Virtually all of the downgrades that took place in the study period took place in that session.²⁷ All twenty-one downgrades that took place that year were contained in a single bill. The bill was not focused on criminal justice; in fact, it was the annual appropriations bill.²⁸ All twenty-one downgrades involved misdemeanor offenses, and all were part of an effort to reduce the state's expenditures on court-appointed lawyers in criminal cases by making more offenses so minor that the appointment of counsel would not be required.²⁹ This mass reclassification was quite different from the typical piecemeal changes to the criminal law that take place each year. The data from 2008 to 2012, during which the legislature averaged one downgrade per session, are probably more representative of the long-term trend. If the 2013 downgrades were to be excluded from the data because they are historically anomalous, the disparity would be forty-four upgrades to five downgrades, almost a nine-to-one ratio. Even when including the 2013 downgrades, the legislature enacted nearly twice as many upgrades as downgrades.

Because the consequences of felony charges and convictions are much greater than those associated with misdemeanors, it is worth counting the upgrades and downgrades that cross the felony-misdemeanor barrier separately. In the study period, eight different misdemeanors were upgraded to felonies, while just a single felony was downgraded to a misdemeanor. The reclassification data therefore support the idea that the criminal law is becoming more severe.

27. See Current Operations and Capital Improvements Appropriations Act of 2013, ch. 360, § 18B.14, 2013 N.C. Sess. Laws 965, 1260–63 (to be codified in scattered sections of N.C. GEN. STAT. chs. 14, 20 (2013)); see also Jeff Welty, *Misdemeanor Reclassification, the Right to Counsel, and the Budget*, N.C. CRIM. L. BLOG (July 23, 2013), <http://nccriminallaw.sog.unc.edu/?p=4368>.

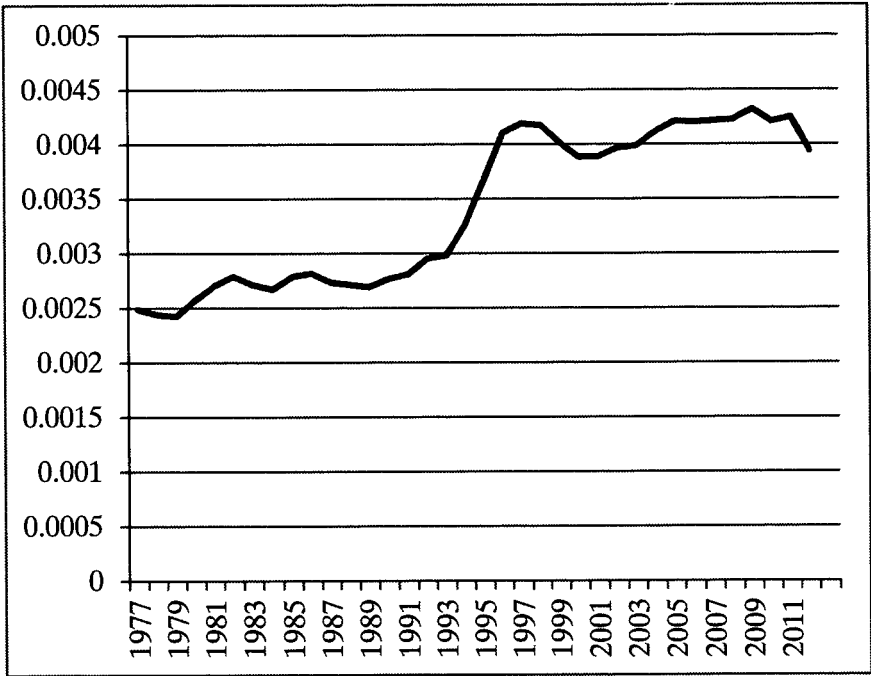
28. Current Operations and Capital Improvements Appropriations Act of 2013, ch. 360, §§ 1.1–1.2.

29. See Welty, *supra* note 27 (discussing the General Assembly's plan to save two million dollars in appointed counsel costs through reclassification).

D. Incarceration Rates

A final way of looking at the scope of the criminal law in North Carolina is by examining incarceration rates in the state. Because North Carolina prison-population data are available online starting in 1977,³⁰ Figure 4 begins at that time:

Figure 4: North Carolina Imprisonment Rate, 1977–2012



There is a dip at the end of the trend line, which appears mainly to be the result of a decline in felony convictions and a tweak to the state’s sentencing laws.³¹ But overall, North Carolina’s incarceration rate has been climbing over the thirty-five years covered in the chart.³² In other words, this way of looking at the criminal law reveals

30. See *Prison Population Summaries Archive*, N.C. DEP’T PUB. SAFETY, http://randp.doc.state.nc.us/scripts/broker.exe?_SERVICE=default&_PROGRAM=sasjob s.DUPS.sas&_DEBUG=0 (last visited Aug. 29, 2014).

31. See Jamie Markham, *What’s Going on with the Prison Population?*, N.C. CRIM. L. BLOG (March 19, 2012), <http://nccriminallaw.sog.unc.edu/?p=3412> (discussing reasons for North Carolina’s declining prison population).

32. The steepest part of the curve begins around 1990. At least two factors contributed to the sharp rise. First, crime rates increased during this period. See *North*

a similar picture to the others: an expansion of the criminal law over time.

Like the other measures set forth above, the incarceration rate is not a perfect way to capture the extent of criminalization in North Carolina. It results in part from factors that are mostly exogenous to the analysis, such as the crime rate³³ and the crime clearance rate, i.e., the percentage of crimes that are solved by law enforcement. However, it is also influenced by the scope of the criminal law and by sentencing practices, both of which are a part of the overcriminalization discussion.

E. Countertrends

The data presented above support the proposition that in North Carolina, the criminal law generally is expanding rather than diminishing. However, although it is sometimes said that the criminal law is a “one-way ratchet,”³⁴ a complete accounting of the history of North Carolina’s criminal law shows that is not the case. Even as the criminal law has grown overall in North Carolina, several significant developments have reduced its reach.

Perhaps the most significant development took place in 1985, when the General Assembly decriminalized many motor vehicle offenses, making them infractions rather than misdemeanors.³⁵ This

Carolina Crime Rates 1960–2012, DISASTER CENTER (2013), <http://www.disastercenter.com/crime/nccrimn.htm>. Second, during this time, many judges began imposing extremely long sentences in response to the frequent release of inmates who had served only a fraction of their time. N.C. SENTENCING & POLICY ADVISORY COMM’N, THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION: A HISTORY OF ITS CREATION AND ITS DEVELOPMENT OF STRUCTURED SENTENCING 2 (2009), available at http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/commission_history_aug2009.pdf (“By the late 1980’s, the criminal justice system in North Carolina was in crisis . . . The Parole Commission was releasing inmates [in response to prison overcrowding] at an unprecedented rate. Defendants were serving only a small fraction of the sentences that they received in court. In reaction, judges imposed even longer sentences.”). However, the curve has a modest positive slope even without that portion, including during the historic drop in crime nationwide that began in the mid-1990s. See generally *THE CRIME DROP IN AMERICA* (Alfred Blumstein & Joel Wallman eds., rev. ed. 2006) (analyzing the national drop in the crime rate in the 1990s).

33. During the period covered by the chart, the crime rate in North Carolina was relatively flat from 1977 through 1985, then rose rapidly to a peak in the early- to mid-1990s, followed by a long decline that took crime rates back to rates not seen since the late 1960s. See *North Carolina Crime Rates 1960–2012*, *supra* note 32.

34. Brown, *supra* note 6, at 223 n.1 (noting the frequent use of the term and collecting examples).

35. See Act of Feb. 5, 1985, ch. 764, 1985 N.C. Sess. Laws 1111 (codified as amended in scattered sections of N.C. GEN. STAT.).

was done on the recommendation of the Courts Commission, which estimated that it would affect “at least 100,000 cases” annually.³⁶ Among the reasons for the recommendation was the sense that “giv[ing] every person convicted of a minor motor vehicle offense a criminal record” was inappropriate, and that classifying motor vehicle offenses as misdemeanors diluted the force of the criminal law.³⁷

A second significant development took place in 2011, when North Carolina passed the Justice Reinvestment Act (“JRA”).³⁸ The JRA was part of a national criminal justice reform effort, which sought to “reduce prison populations and spending on corrections and then to reinvest the savings in community-based programs.”³⁹ The JRA did not repeal any crimes, but it diminished the severity of the state’s habitual felon law and made it more difficult to revoke offenders’ probation and send them to prison, among other changes.⁴⁰ The recent dip in prison population noted above may continue in part as a result of the JRA.

Finally, in 2013, North Carolina reclassified several dozen misdemeanors, either making them lower-level crimes, or in some cases, noncriminal infractions. Although not as sweeping as the 1985 reform, this reclassification initiative nonetheless included several very common offenses, such as writing worthless checks and driving without a license or without insurance.⁴¹ As noted above, this reform was motivated at least in part by a desire to reduce appointed-counsel costs rather than by overcriminalization concerns, but nonetheless, the ultimate effect has been a reduction in the scope of the criminal law.⁴²

Similar countertrends exist in other states.⁴³ In fact, one commentator has suggested that on balance, the states are moving

36. N.C. COURTS COMMISSION, REPORT OF THE COURTS COMMISSION TO THE NORTH CAROLINA GENERAL ASSEMBLY 13 (1985).

37. *Id.* at 14.

38. The Justice Reinvestment Act of 2011, ch. 192, 2011 N.C. Sess. Laws 758 (codified in scattered sections of N.C. GEN. STAT.).

39. JAMES M. MARKHAM, THE NORTH CAROLINA JUSTICE REINVESTMENT ACT 1 (2012).

40. *See id.* at 27–29, 63–64 (discussing the changes made to habitual felon laws and to probation revocation).

41. *See supra* notes 27–29 and accompanying text.

42. *Id.* For a further discussion of reclassification, the offenses covered, and the effect of reclassification on the right to appointed counsel, see generally Welty, *supra* note 27.

43. *See, e.g.,* Brown, *supra* note 6, at 239 (“Another class of low-level crimes that some legislatures abandoned over the last two decades is minor traffic offenses; several states have rewritten those offenses as civil infractions instead of misdemeanors.”);

towards less criminalization rather than more.⁴⁴ That does not appear to be so in North Carolina, but it is important to note that increasing criminalization is accompanied by, and partly offset by, occasional decriminalization.

II. ASSESSING THE GROWTH OF THE CRIMINAL LAW IN NORTH CAROLINA

The fact that North Carolina's criminal law has expanded does not necessarily show that North Carolina is overcriminalized. Perhaps North Carolina was undercriminalized and growth in the criminal law was needed, or perhaps the new criminal laws are appropriate responses to new types of antisocial behavior.⁴⁵ This Part attempts to assess whether North Carolina is in fact overcriminalized. There is no single accepted test for whether a jurisdiction is overcriminalized, so this Part considers whether North Carolina has many laws on the books that are rarely applied; how North Carolina's criminal code compares to other jurisdictions' codes; trends in North Carolina's incarceration rate compared to national data; and the ability of North Carolinians to understand and to comply with the law. Although each of these metrics is imperfect, together they show that North Carolina is overcriminalized; furthermore, they suggest that other states may be in the same boat.

NANCY LAVIGNE ET AL., URBAN INST., JUSTICE REINVESTMENT INITIATIVE STATE INVESTMENT REPORT app. A (Jan. 2014), *available at* <http://www.urban.org/UploadedPDF/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.pdf> (discussing the implementation of the justice reinvestment approach in seventeen states).

44. Brown, *supra* note 6, at 225. Brown emphasizes that many states have decriminalized various forms of consensual sex, *id.* at 235, have liberalized alcohol and gambling laws, *id.* at 237–38, and reject many proposed new crimes each year, *id.* at 245–49. The last point is irrelevant: whether a state is overcriminalized depends on what criminal laws it has, not what laws it might have had. The points about the liberalization of laws regarding consensual sex, alcohol, and gambling are important, but may be less true about North Carolina than many other states. Overall, it is possible to believe both that Brown is correct that the “criminal law’s reach . . . is substantially less than it was a century ago,” *id.* at 234, and that over the shorter span of the past several decades, the scope of the criminal law has expanded rapidly.

45. See Andrew Ashworth, *Conceptions of Overcriminalization*, 5 OHIO ST. J. CRIM. L. 407, 423 (2008) (“In order to determine whether one has too much of a certain thing, it is necessary to decide what is the right amount. Any discussion of overcriminalization must therefore start from a conception of the mean, of the right amount of criminal law.”); see also HUSAK, *supra* note 1, at 3 (“We have lots of punishment and lots of criminal law. Although we have enormous amounts of both, we cannot say whether we have *too much* punishment or criminal law without a normative theory to tell us which punishments and criminal laws a[re] justified.”).

A. Unnecessary and Unused Laws

Criminal codes should contain only necessary laws. Unused, obsolete, and redundant provisions only make the law more difficult to understand and to apply. Unfortunately, North Carolina has many unnecessary and unused laws, and adds more each year.

1. Old Laws

Some criminal laws were relevant at one time but have since become antiquated. Sometimes this phenomenon arises due to changes in morality.⁴⁶ For example, North Carolina law continues to make the “lascivious[] associat[ion]” of unmarried men and women a misdemeanor,⁴⁷ though the offense was not charged a single time in 2012.⁴⁸ A statute also forbids a man and a woman from “occupying the same bedroom in any hotel, public inn or boardinghouse for any immoral purpose.”⁴⁹ This offense was charged just once in 2012.⁵⁰ Similarly, North Carolina’s crime against nature statute remains in place,⁵¹ its text unchanged even after *Lawrence v. Texas*⁵² rendered the law at least partially unconstitutional.⁵³

In other instances, laws arise in response to the social conditions of a particular time or place and are of little continuing utility once those conditions have changed. For example, North Carolina law makes it a crime for certain executives of railroad companies to fail to provide an accounting to their successors.⁵⁴ Presumably that was a

46. See generally Beale, *supra* note 10, at 747, 750–52 (“One form of overcriminalization is the retention of crimes beyond the time that they serve an important social purpose, particularly when the laws deal with conduct that is common and innocuous. Laws restricting behavior on Sundays, and prohibiting swearing and spitting on the street exemplify this problem. A significant number of states retain criminal laws dealing with these kinds of conduct. Because of the evolution of the social conventions regarding sexual morality, criminal laws that regulated traditional morality now pose many of the same issues. . . . Despite the contemporary view that sexual morality should not be regulated by the criminal law, a surprisingly large number of states have not repealed laws regulating sexual morality.”).

47. N.C. GEN. STAT. § 14-184 (2013).

48. See N.C. Admin. Office of the Courts, 2012 Offense Statistics Data Set (on file with the author).

49. N.C. GEN. STAT. § 14-186 (2013).

50. N.C. Admin. Office of the Courts, 2012 Offense Statistics Data Set (on file with the author).

51. N.C. GEN. STAT. § 14-177 (2013).

52. 539 U.S. 558 (2003).

53. *Id.* at 578–79 (finding a due process right protecting noncommercial sexual activity between consenting adults).

54. N.C. GEN. STAT. § 14-253 (2013).

grave concern in 1870 when the statute was enacted,⁵⁵ but the need for a criminal provision seems to have receded, as the offense was not charged at all in 2012.⁵⁶ Likewise, the statute that criminalizes the temporary taking of horses, mules, and dogs, does not appear to respond to a vital contemporary concern.⁵⁷

Of course, many old laws remain essential. But North Carolina, like other states, has several criminal laws that are unnecessary relics of a bygone era.⁵⁸

2. New Laws

It is not surprising that the criminal code contains antiquated provisions that are rarely employed. But one would expect new crimes to be enacted in response to current problems, and so to be charged regularly. If a criminal statute is enacted but rarely used, there is good reason to doubt whether the law was needed in the first place. As it turns out, North Carolina has many new laws that are rarely used.

In fact, data collected by the North Carolina Administrative Office of the Courts reveal that in North Carolina, most new crimes are effectively dead letters from the beginning.⁵⁹ Figure 5 looks at the frequency with which crimes created during the 2009 and 2010 legislative sessions were charged in 2012.⁶⁰

55. Act of February 16, 1871, ch. 72, §§ 1-3, 1870 N.C. Sess. Laws 136, 136 (codified at N.C. GEN. STAT. § 14-253 (2013)).

56. See N.C. Admin. Office of the Courts, 2012 Offense Statistics Data Set (on file with the author).

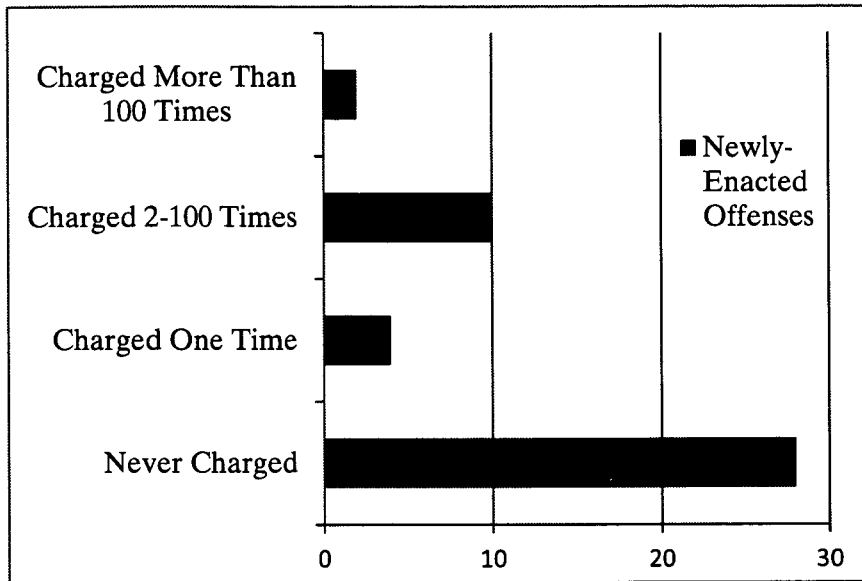
57. N.C. GEN. STAT. § 14-82 (2013). This statute was charged twice across the state in 2012. N.C. Admin. Office of the Courts, 2012 Offense Statistics Data Set (on file with author).

58. Readers will no doubt be familiar with popular articles describing such laws. See, e.g., Stephanie Paul, *Top Craziest Laws Still on the Books*, LEGALZOOM.COM (Oct. 2007), <http://www.legalzoom.com/us-law/more-us-law/top-craziest-laws-still>.

59. See N.C. Admin. Office of the Courts, 2012 Offense Statistics Data Set (on file with the author).

60. Using 2012 data is more appropriate than using 2011 data because it is still close in time to the adoption of the statutes in question, but is far enough after adoption for law enforcement officers, prosecutors, and others to become familiar with the new crimes. New offenses in North Carolina normally take effect on or before December 1 of the year in which they are enacted. Therefore, using data from 2012 calendar year means that even the criminal laws created in 2010 would have been in effect for thirteen months or more—a sufficient time for criminal justice professionals to become familiar with the new crimes.

Figure 5: Frequency with Which Crimes Created in 2009–2010 Were Charged in 2012



As Figure 5 shows, 64% of the newly minted crimes were not charged even a single time,⁶¹ and 73% of the crimes were either not charged at all, or were charged just once across the state. This strongly suggests that many unnecessary criminal laws are being enacted each year.⁶² Among the uncharged crimes are releasing non-

61. The chart includes forty-four crimes created in 2009 and 2010. It excludes five misdemeanors created in 2009 by local act, applicable only to certain counties, as the Administrative Office of the Courts (“AOC”) does not track such offenses. By their nature, such crimes are minor offenses of local concern and are unlikely to be charged frequently, so even if it were possible to include them, the overall picture would be unlikely to change. It also excludes two misdemeanors that the AOC tracked only in aggregation with other crimes defined in the same statutes. In both cases, even the aggregated number of charges was quite low, but because it was not possible to isolate the contribution of the new offenses to the total, they were excluded from the chart. Of the forty-four included crimes, twenty-eight were not charged at all in 2012, four were charged one time each, ten were charged between two and one hundred times, and just two were charged more than one hundred times (204 and 349 times, respectively).

62. Some conduct should be criminal even if the conduct is rare. For example, even in a peaceful jurisdiction where homicide is uncommon, it would still be appropriate to have a law against murder, just in case. But North Carolina has long had such bedrock laws against inherently wrongful and extremely serious misconduct. Most of the crimes enacted recently in North Carolina have arisen in response to some perceived novel problem or

native venomous reptiles into the wild;⁶³ stealing or vandalizing a portable toilet;⁶⁴ failing to keep certain records regarding the disposal of sewage from boats;⁶⁵ and performing sleep studies without a proper license.⁶⁶ Crime-by-crime data are set forth in Appendix III.

The data support the idea that many new crimes are unnecessary and so contribute to overcriminalization. At the same time, the data also show that enacting more laws does not necessarily result in many more prosecutions or more sentences. For those who are concerned about overcriminalization mostly because they worry that the state incarcerates and punishes too many people too severely, these data may actually be reassuring, as the vast majority of new laws contribute little or nothing to the number of criminal convictions and the number of prison inmates in North Carolina.

B. Comparison to Other Jurisdictions

Benchmarking is a standard way of assessing governmental activities. It would be noteworthy if North Carolina's criminal code was much larger, or much smaller, than other states'. Likewise, it would raise questions if North Carolina's criminal law was growing much more quickly, or more slowly, than the law in other jurisdictions. While hampered by limited data, the discussion below shows that North Carolina's criminal code is more extensive than many other states' codes, and is far more extensive than the leading model code; that the criminal law is expanding in other jurisdictions as it is in North Carolina; and that North Carolina's incarceration rate is increasing, but more slowly than in the nation as a whole.

1. Code Size and Expansion in Other States

There are no comprehensive published data regarding the size of the criminal codes in other states. As noted above, as of 2011, Chapter 14 of the North Carolina General Statutes contained 765

incident. Yet the data show that in reality, the problems are not widespread or serious enough to result in a significant number of charges.

63. N.C. GEN. STAT. § 14-422(c) (2013).

64. *Id.* § 14-86.2. Of course, North Carolina's general larceny and injury to property statutes would prohibit this conduct in any event. *See id.* §§ 14-72, -127.

65. *Id.* § 77-128.

66. Polysomnography Practice Act, ch. 434, § 1, 2009 N.C. Sess. Laws 840, 842 (codified at N.C. GEN. STAT. § 90-723 (2013) (renumbered by the Revisor of the Statutes)).

sections.⁶⁷ Looking at nearby states, Title 16 of the South Carolina Code, entitled “Crimes and Offenses,” currently contains 560 sections;⁶⁸ Title 16 of the Georgia Code, entitled “Crimes and Offenses,” currently contains 671 sections;⁶⁹ and Title 39 of the Tennessee Code, entitled “Criminal Offenses,” currently contains 607 sections.⁷⁰ According to a relatively recent code count conducted by others, Virginia’s criminal code has 495 sections.⁷¹ Farther afield, Illinois’s criminal code reportedly contains 421 sections, while Massachusetts’s consists of 535 sections.⁷²

North Carolina’s criminal code contains the most sections among these jurisdictions’ codes. However, the comparison is not apples to apples because the scope of the criminal law chapter in each state’s code is different. For example, drug crimes are not part of Chapter 14 in North Carolina.⁷³ They are in Chapter 90, which addresses the practice of medicine and related matters.⁷⁴ In Tennessee, however, drug crimes are included in Title 39, “Criminal Offenses.”⁷⁵ Similarly, the main repository of criminal law in South Carolina, Title 16, contains a number of provisions regarding the rights of crime victims,⁷⁶ while North Carolina’s victims’ rights statutes are located outside Chapter 14.⁷⁷ Thus, while the available data are compatible with the idea that North Carolina has more criminal laws than several other states, they are not conclusive proof of it.

As with code size, there is no comprehensive published set of data concerning the rate of growth of other states’ criminal codes. The available information consists of the following:

67. See N.C. GEN. STAT. ch. 14 (2013) (number arrived at by author’s count, excluding repealed sections).

68. See S.C. CODE. ANN. tit. 16 (2013) (number arrived at by author’s count, excluding repealed sections).

69. See GA. CODE ANN. ch. 16 (2013) (number arrived at by author’s count, excluding repealed sections).

70. See TENN. CODE ANN. ch. 39 (2013) (number arrived at by author’s count, excluding repealed sections).

71. William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 514 (2005).

72. *Id.*

73. See N.C. GEN. STAT. ch. 14 (2013).

74. See generally N.C. GEN. STAT. ch. 90 (2013) (regulating the practice of medicine in the state of North Carolina).

75. See generally TENN. CODE ANN. § 39-17-400 to -454 (2013) (detailing Tennessee’s drug crimes).

76. See S.C. CODE. ANN. § 16-3-1505 to -1565 (2013).

77. See N.C. GEN. STAT. § 15A-824 to -829 (2013).

- One article describes code growth in Illinois this way: “In 1856, Illinois’s criminal code contained 131 separate crimes. In 1874, the number had grown to 220. By 1899 it was 305; it reached 460 in 1951. The reform of the state’s criminal code in 1961, influenced by the Model Penal Code project then underway, reduced this number substantially [As of 1996, it was 263], [b]ut the increases soon began again; [as of 2005,] the number is back up to 421.”⁷⁸
- The same article also reports that “[i]n the past century and a half, Virginia’s criminal code grew from 170 offenses to 495 . . . [while] Massachusetts went from 214 crimes . . . to 535.”⁷⁹
- Another article states that “the [2003] Illinois Criminal Code contains 136,181 words, whereas the original 1961 Code had 23,970 words.”⁸⁰

These data points suggest that other states have also experienced growth in their criminal codes. The data are so fragmentary that it is not possible to compare other states’ growth rates with North Carolina’s experience. At most, the data may suggest that North Carolina’s code growth is on the same order of magnitude as the growth in the other states that have been examined, but much more research needs to be done before more precise comparisons are possible.

2. The Model Penal Code

The Model Penal Code is the American Law Institute’s effort to present a “contemporary reasoned judgment” about what a state criminal code should include.⁸¹ It was completed in 1962 and contains just 114 sections defining crimes.⁸² Even at that time, Chapter 14 of

78. Stuntz, *supra* note 71, at 513–14 (citations omitted).

79. *Id.* at 514 (citations omitted). Note that although the cited work refers to “offenses” and “crimes,” it appears to be counting code sections rather than distinct offenses.

80. Robinson & Cahill, *supra* note 8, at 172 n.16.

81. *Publications Catalog: Model Penal Code*, A.L.I., http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=92 (last visited Aug. 29, 2014).

82. See MODEL PENAL CODE (Proposed Official Draft 1962). Although the code is relatively comprehensive, its drafters chose not to include any drug or gambling laws.

North Carolina's General Statutes contained about four times as many sections, and other chapters of the statutes contained additional criminal provisions.⁸³ The contrast is even greater today, with Chapter 14 alone containing approximately six times as many sections as the Model Penal Code. The American Law Institute has not added any offenses to the Model Penal Code in the past fifty-plus years, though it has begun to review the provisions concerning sexual assaults and related offenses and the provisions regarding sentencing.⁸⁴ Thus, both in terms of code size and code growth, North Carolina has far outstripped the Model Penal Code.

3. The Federal Criminal Code

While state criminal codes have received little attention in the public discussion of overcriminalization, repeated efforts have been made to describe the size and rate of growth of the federal criminal law. The efforts have not been completely successful, as even the United States Department of Justice cannot say for sure how many federal crimes there are.⁸⁵ Still, some counting has been done. One commentator summarized:

In the version of the Revised Statutes passed in December 1873, the title on federal crimes included 183 separate offenses. By 2000, 643 separate sections of Title 18 of the United States Code defined crimes; since some of those sections defined a number of offenses, the number of distinct crimes in Title 18 is almost certainly over one thousand. And even that larger number is much less than half the total number of federal offenses.⁸⁶

PAUL H. ROBINSON & MARKUS DIRK DUBBER, AN INTRODUCTION TO THE MODEL PENAL CODE 7–8 (1999), available at <https://www.law.upenn.edu/fac/phrobins/intromodpencode.pdf> (discussing the omission). If those topics were addressed, the code would be somewhat longer.

83. See N.C. GEN. STAT. ch. 14 (2013).

84. The Institute's website contains current information concerning its work in these areas. See *Current Projects: Sexual Assault and Related Offenses*, A.L.I., http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=26 (last visited Aug. 29, 2014); *Current Projects: Sentencing*, A.L.I., http://www.ali.org/index.cfm?fuseaction=projects.proj_ip&projectid=2 (last visited Aug. 29, 2014).

85. Fields & Emshwiller, *supra* note 6, at A1 (noting that the Department produced an "estimate" of 3,000 crimes in the 1980s, and that a spokesperson for the Department recently advised that there is "no quantifiable number" of federal crimes); see also *infra* notes 88–90 and accompanying text.

86. Stuntz, *supra* note 71, at 514–515 (citations omitted).

Professor John Baker has made the best-known attempts to quantify the recent growth of the federal criminal code.⁸⁷ According to Professor Baker, the United States Department of Justice undertook a comprehensive count in the early 1980s and came up with an estimate of 3,000 federal crimes.⁸⁸ Professor Baker's investigation led him to conclude that as of 2000, there were approximately 4,000 federal crimes, and that as of 2007, there were 4,450.⁸⁹ Professor Baker observed that "[t]he increase of 452 [new crimes] over the eight-year period between 2000 and 2007 averages 56.5 crimes per year—roughly the same rate at which Congress created new crimes in the 1980s and 1990s."⁹⁰

The growth-rate data provide a basis for comparison with North Carolina. As noted above, the General Assembly created over thirty-four new crimes per year between 2008 and 2013.⁹¹ North Carolina's criminal law, then, may be expanding more slowly than the federal criminal law, but the difference is one of degree rather than kind. In fact, one could argue that the state's 170 part-time legislators are keeping up remarkably effectively with the 535 full-time, heavily staffed, members of Congress.

C. Incarceration Rates

As noted above, the past several decades have seen an increasing percentage of North Carolina residents in prison. However, North Carolina's imprisonment rate is lower than the national rate, and North Carolina's imprisonment rate has grown more slowly than the national rate.⁹² Figure 6 illustrates the relationship:

87. See generally JOHN S. BAKER, HERITAGE FOUNDATION, LEGAL MEMORANDUM NO. 26: REVISITING THE EXPLOSIVE GROWTH OF FEDERAL CRIMES (2008), available at <http://www.heritage.org/research/reports/2008/06/revisiting-the-explosive-growth-of-federal-crimes> (arguing that overcriminalization has weakened the moral authority of the law by diminishing the mens rea requirements for many crimes).

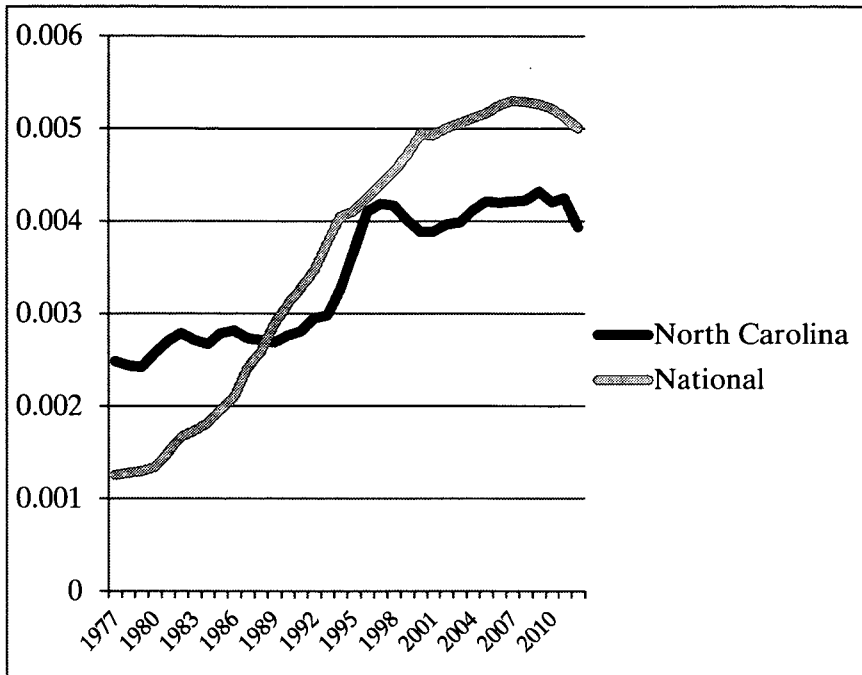
88. *Id.* at 3.

89. *Id.* at 5.

90. *Id.* at 1.

91. See *supra* note 20 and accompanying text.

92. This information and the chart below were compiled by comparing the incarceration rates from North Carolina, *Prison Population Summaries Archive*, *supra* note 30, with the national incarceration rates provided by the Bureau of Justice Statistics, see BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONERS IN 2012 (2013), available at <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONERS IN 2011 (2012), available at <http://www.bjs.gov/content/pub/pdf/p11.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONERS IN 2001 (2002), available at

Figure 6: Incarceration Rates, 1977–2012

It is important to remember that incarceration rates are only partly explained by the extent of criminalization in a jurisdiction. Furthermore, comparing incarceration rates can be difficult or misleading. Some jurisdictions rely more on incarceration as a sanction, while others make greater use of probation or other correctional tools. Also, different jurisdictions incarcerate different percentages of sentenced inmates in local jails, as opposed to state prisons, making comparisons of prison populations particularly problematic. With all of these caveats firmly in mind, the data above provide valuable context for thinking about North Carolina's place in the overcriminalization discussion, and are consistent with the idea

<http://www.bjs.gov/content/pub/pdf/p01.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONERS IN 1996 (1997), *available at* <http://www.bjs.gov/content/pub/pdf/p96.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONERS IN 1989 (1990), *available at* <http://www.bjs.gov/content/pub/pdf/p89.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, HISTORICAL STATISTICS ON PRISONERS IN STATE AND FEDERAL INSTITUTIONS, YEAREND 1925–86 (1988), *available at* <https://www.ncjrs.gov/pdffiles1/Digitization/111098NCJRS.pdf>.

that while overcriminalization is a concern in North Carolina, it is not a concern unique to North Carolina.

D. Ability of Citizens to Understand and Comply with the Law

A final way of assessing North Carolina's criminal law is to ask whether it is within the average citizen's ability to understand and comply with the law. The common law rule that ignorance of the law is no excuse⁹³ is "[b]ased on the notion that the law is definite and knowable."⁹⁴ If the law is so extensive and complex that citizens cannot realistically be expected to be familiar with it, the common law rule is unfair in its application.⁹⁵ Indeed, the increasing complexity of the criminal law has led some, including a former United States Attorney General, to argue that the courts should recognize a mistake of law defense.⁹⁶

93. See, e.g., *State v. Bryant*, 359 N.C. 554, 566, 614 S.E.2d 479, 487 (2005) (noting that "ignorance of the law is no excuse" and that all citizens are presumptively charged with knowledge of the law).

94. *Cheek v. United States*, 498 U.S. 192, 199 (1991).

95. In fact, the Supreme Court has interpreted several federal criminal statutes to require proof that the defendant was aware that he or she was violating the law, based in part on the Court's recognition of the extreme complexity of certain areas of the criminal law. See, e.g., *Ratzlaf v. United States*, 510 U.S. 135, 146–49 (1994) (interpreting the willfulness requirement of a law prohibiting structuring financial transactions to avoid reporting requirements as requiring the prosecution to establish that the defendant was aware of the law and intended to violate it); *Cheek*, 498 U.S. at 199–200 (reciting the common law rule that ignorance of the law is no excuse but noting that "[t]he proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws," so "Congress has . . . softened the impact of the common-law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses"). Although *Ratzlaf* and *Cheek* were decided on statutory grounds, the Court has repeatedly held in the vagueness context that due process requires fair notice. See, e.g., *United States v. Williams*, 553 U.S. 285, 304 (2008) ("A conviction fails to comport with due process if the statute under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited . . ."); *Gilmore v. Taylor*, 508 U.S. 333, 358 (1993) (Blackmun, J., dissenting) ("People can conform their conduct to the dictates of the criminal law only if they can know what the criminal law has to say about their conduct. Proper warning is a constitutional imperative."). Together, these cases at least raise the question of whether the proliferation of the criminal law could implicate due process.

96. Edwin Meese III & Paul J. Larkin, Jr., *Reconsidering the Mistake of Law Defense*, 102 J. CRIM. L. & CRIMINOLOGY 725, 734 (2012) (arguing that the Supreme Court should recognize a mistake of law defense based on the Due Process Clause, in part because "[t]here is an ever-increasing number of crimes," especially ones "that are outside the category of inherently harmful or blameworthy acts," making knowledge of the law unattainable).

Unfortunately, there are no data about how informed North Carolinians are about the criminal law, so it is impossible to be sure whether North Carolina's criminal law has passed the point of unreasonable complexity. In fact, there is a notable lack of empirical research on this issue nationally. The leading study is based on a small survey conducted in four states. It found that, even with respect to "important laws, concerning whether one has a duty to help a person in distress, report a known felon, or retreat rather than respond with deadly force when threatened . . . citizens showed no particular knowledge of the laws of their states."⁹⁷ The picture of ignorance is consistent with another study of Americans' overall knowledge base, which found that only 42% of Americans know that the crime of betraying one's country is called treason.⁹⁸ Neither source attempts to explain why citizens are unaware of the law, so the contribution of overcriminalization, if any, is unclear. Much better research is needed in this area.⁹⁹

For now, the most that can be said is that many North Carolina residents may be ignorant of much of the state's criminal law, and that a simpler and more compact criminal code might be easier to remember and to follow. A better understood criminal code might also command greater respect.¹⁰⁰

III. EXPLAINING THE GROWTH OF THE CRIMINAL LAW IN NORTH CAROLINA

This Article focuses on describing the growth of the criminal law in North Carolina and assessing whether that growth is the result of overcriminalization. Still, it is worth mentioning briefly some of the

97. John M. Darley et al., *The Ex Ante Function of the Criminal Law*, 35 LAW & SOC'Y REV. 165, 181 (2001); see also Dru Stevenson, *Toward a New Theory of Notice and Deterrence*, 26 CARDOZO L. REV. 1535, 1536–37 (2005) (opining that "it is commonly accepted that very few people know much about what the laws say . . . [and] a general ignorance of the law is so universal, except perhaps among lawyers, that it is almost presumed").

98. Sarah K. Tauber et al., *General Knowledge Norms: Updated and Expanded from the Nelson and Narens (1980) Norms*, 45 BEHAVIORAL RESEARCH 1115, 1122 (2013).

99. The necessary research is not merely empirical. It would also be helpful to explore whether there is a theoretical limit on the size of the criminal law that citizens can be expected to recall and to follow. Evolutionary anthropologist Robin Dunbar argues that our brains simply can't accommodate more than 150 social relationships. ROBIN DUNBAR, HOW MANY FRIENDS DOES ONE PERSON NEED? 34 (2010). Perhaps there is a similar limit to the number of legal prohibitions we can remember.

100. HUSAK, *supra* note 1, at 12–13 (arguing that overcriminalization "is destructive of the rule of law").

factors that likely have contributed to the growth of the criminal law in North Carolina and elsewhere. These factors have been examined closely by others¹⁰¹ and will simply be summarized here.

Many voters want tough action taken against criminals. This is natural, as crime is a serious problem.¹⁰² However, Americans believe violent crime to be much more common than it actually is,¹⁰³ meaning that they may erroneously view the criminal justice system as weak or ineffective. The news media contributes to this phenomenon by reporting on crime in a sensational manner that fuels the public's concern about crime.¹⁰⁴

Legislators are citizens and may share the same concerns about crime as other citizens. In addition, regardless of legislators' personal beliefs, they need votes to keep their jobs, and thus want to meet their constituents' demands for "tough on crime" legislation.¹⁰⁵

101. See generally, Luna, *supra* note 2, at 719–29 (discussing the causes of overcriminalization); Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 HARV. J.L. & PUB. POL'Y 715 (2013) (using public choice theory as a tool for analysis).

102. According to the FBI, over 1.2 million violent crimes—murder, manslaughter, rape, robbery, and aggravated assault—took place in the United States in 2012. *Crime in the United States, 2012: Violent Crime*, FBI.GOV, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s-2012/violent-crime/violent-crime> (last visited Aug. 29, 2014). Over 34,000 violent crimes took place in North Carolina in 2012. *Id.* at tbl.5.

103. D'VERA COHN ET AL., PEW RESEARCH CENTER, GUN HOMICIDE RATE DOWN 49% SINCE 1993 PEAK; PUBLIC UNAWARE 1–2, (2013), available at http://www.pewsocialtrends.org/files/2013/05/firearms_final_05-2013.pdf (“Compared with 1993, . . . the firearm homicide rate was 49% lower in 2010 The victimization rate for other violent crimes with a firearm—assaults, robberies and sex crimes—was 75% lower in 2011 than in 1993. . . . Despite national attention to the issue of firearm violence, most Americans are unaware that gun crime is lower today than it was two decades ago. . . . [T]oday 56% of Americans believe gun crime is higher than 20 years ago and only 12% think it is lower.”). While crime rates have fallen across the country over the past several decades, long-term polling data from Gallup reveal that far more Americans see crime as getting worse than as getting better. See *Gallup Poll on Crime*, GALLUP, INC., <http://www.gallup.com/poll/1603/crime.aspx> (last visited May 9, 2014) (noting that in twenty-one of twenty-five polls dating back to 1972, a plurality or a majority of respondents stated that crime was increasing in their area; in nineteen of twenty polls dating back to 1989, a plurality or a majority of respondents stated that crime was increasing nationally).

104. See, e.g., Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397 (2006) (discussing the relationship between the media's treatment of crime and public opinion); Daniel Romer et al., *Television News and the Cultivation of Fear of Crime*, 53 J. COMM. 88, 88–91 (2003) (finding that viewers of local news programs, which focus heavily on crime, reported increased fear of crime).

105. See, e.g., Meese & Larkin, *supra* note 96, at 783 (“Legislators have found that the best (or even the only) option open to them to address the problem of crime—or be seen as ‘tough’ in doing so, as a way of avoiding critical thirty-second TV campaign

Voters' interest in crime therefore gives legislators a strong incentive to enact new criminal laws. It is particularly difficult for legislators to resist making changes in response to highly publicized incidents with sympathetic victims, even if those incidents arise infrequently or are adequately addressed by current law.¹⁰⁶

By contrast, legislators have little incentive to repeal or to revise antiquated or unnecessary laws. In some cases, such laws are rarely enforced and so generate little public outcry. In other instances, these laws address conduct that is morally repugnant to some voters, even if it is not properly viewed as criminal. For example, after *Lawrence v. Texas*,¹⁰⁷ it is clear that North Carolina's crime against nature statute¹⁰⁸ is unconstitutional, at least as it applies to private, noncommercial conduct among consenting adults.¹⁰⁹ But two attempts to narrow the scope of the law have garnered little support and have died in committee.¹¹⁰ Likewise, while *Texas v. Johnson*¹¹¹ held that laws against flag desecration violate the First Amendment,¹¹² North Carolina has retained its statute making it "unlawful for any person

commercials—is to make more and more conduct criminal or to punish more severely conduct already outlawed. No one has ever lost an election by making the penal code more wide-ranging and more punitive.”). The platform of the North Carolina Republican Party endorses the death penalty, mandatory sentencing for all violent crimes, “maximum” punishment for child pornographers, “stiff penalties” for child abusers, and other tough on crime policies. *North Carolina Republican Party Platform 2013*, NORTH CAROLINA REPUBLICAN PARTY (2013), <http://www.ncgop.org/platform/>. Although the North Carolina Democratic Party does not have anything similar in its platform, “[b]eing tough on crime has long been part of the Southern Democratic playbook.” Rob Christensen, *Governor Grabs Hold of a Clear-Cut Issue*, RALEIGH NEWS AND OBSERVER, Oct. 23, 2009, <http://www.newsobserver.com/2009/10/23/154079/governor-grabs-hold-of-a-clear.html>.

106. Such laws are often named after the victims in question. For a further discussion of such laws, see Jeff Welty, *Laws Named After Victims*, N.C. CRIM. L. BLOG (July 12, 2011, 10:03 AM), <http://nccriminallaw.sog.unc.edu/?p=2678>.

107. 539 U.S. 558 (2003).

108. N.C. GEN. STAT. § 14-177 (2013).

109. *State v. Whiteley*, 172 N.C. App. 772, 779, 616 S.E.2d 576, 581 (2005) (rejecting a facial challenge to the crime against nature statute based on *Lawrence* but limiting its application to “conduct in which a minor is involved, conduct involving nonconsensual or coercive sexual acts, conduct occurring in a public place, or conduct involving prostitution or solicitation”).

110. See H.B. 100, 2009–2010 Gen. Assemb., Reg. Sess. (Draft, N.C. Feb. 11, 2009); S.B. 208, 2011–2012 Gen. Assemb., Reg. Sess. (Draft, N.C. Mar. 3, 2011).

111. 491 U.S. 397 (1989).

112. See *id.* at 415 (“[N]othing in our precedents suggests that a State may foster its own view of the flag by prohibiting expressive conduct relating to it.”).

willfully . . . to cast contempt upon any flag of the United States or any flag of North Carolina by public acts of physical contact.”¹¹³

The most noteworthy aspect of this narrative is how intuitive it is. It is not necessary to invent a conspiracy theory to explain overcriminalization, nor is it necessary to view politicians or participants in the criminal justice system as power hungry or nefarious. Instead, overcriminalization likely results from people acting in good faith and in rational, and predictable ways. Unfortunately, that makes overcriminalization a difficult problem to address.

IV. REDUCING OVERCRIMINALIZATION

While the social and political forces that result in overcriminalization are deeply rooted, there are several available strategies for reducing overcriminalization or blunting its impact in North Carolina. This Part describes three possible checks on overcriminalization: prosecutorial discretion; an office dedicated to the repeal of unnecessary laws; and periodic review of little-used laws.

A. *Prosecutorial Discretion*

The most important existing check on the effect of overcriminalization is the discretion that prosecutors exercise regarding which crimes to prosecute vigorously, which crimes to prosecute with less enthusiasm, and which crimes not to pursue at all. For example, a prosecutor might be presented with evidence that a teenager sent an explicit picture of herself to her boyfriend. The prosecutor might conclude that the conduct meets the elements of a child pornography offense,¹¹⁴ but determine that the matter is best left to the school system and to the families involved.¹¹⁵

113. N.C. GEN. STAT. § 14-381 (2013).

114. This scenario likely meets the elements second-degree exploitation of a minor. *Id.* § 14-190.17 (making it a felony to “[r]ecord[]” or “[d]istribute[] . . . material that contains a visual representation of a minor engaged in sexual activity”).

115. Although less often discussed, law enforcement officers exercise similar discretion regarding the enforcement of the criminal law. Officers are given arrest authority by section 15A-401 of the North Carolina General Statutes, which repeatedly provides that officers “may” arrest lawbreakers. *Id.* § 15A-401. This is consistent with the general rule that “[t]raditionally, law enforcement officers have the discretion in deciding whether to make an arrest.” *George v. Rehiel*, 738 F.3d 562, 583 (3d Cir. 2013).

This type of discretionary determination happens every day and is an important limit on the criminal law.¹¹⁶ In fact, the frequent, judicious, and appropriate use of prosecutorial discretion may be one reason that overcriminalization has attracted little attention in North Carolina. However, it is not a panacea. It does not prevent the law from being more complicated than it needs to be and it leaves archaic laws on the books. For example, larceny of ginseng remains a felony in North Carolina,¹¹⁷ even if prosecutions for the crime are rare. Additionally, relying on prosecutorial discretion to check overcriminalization risks the occasional abuse of that discretion and virtually ensures significant local variation regarding which laws are enforced and how vigorously.¹¹⁸

Furthermore, overcriminalization places unreasonable demands on prosecutors. Prosecutors already handle huge case volumes and have little time to become familiar with, much less prosecute violations of, the frequent additions to North Carolina's criminal code.¹¹⁹ Some scholars have argued that overcriminalization benefits

116. See, e.g., Bruce A. Green & Fred C. Zacharias, *Prosecutorial Neutrality*, 2004 WIS. L. REV. 837, 873 (2004) (noting that prosecutorial discretion "prevents overenforcement and application of onerous penalties to minor offenders," and collecting authorities); Erik Luna, *Prosecutorial Decriminalization*, 102 J. CRIM. L. & CRIMINOLOGY 785, 795 (2012) ("In an overcriminalized world, prosecutors are already decriminalizing conduct through their discretionary decisionmaking.").

117. N.C. GEN. STAT. § 14-79 (2013).

118. A recent example of variations between jurisdictions concerns the interpretation and enforcement of the law criminalizing certain electronic sweepstakes. See Michael D. Abernathy, *Internet Sweepstakes Businesses Opening Again*, BURLINGTON TIMES-NEWS, Jan. 12, 2014, <http://www.thetimesnews.com/news/top-news/internet-sweepstakes-businesses-opening-again-1.261496> (noting varying approaches across the state). Another example involves the state's habitual felon law, which is employed in very different ways in different prosecutorial districts. See Ronald F. Wright, *Persistent Localism in the Prosecutor Services of North Carolina*, 41 CRIME & JUST. 211, 222 (2012) (noting that some prosecutors use the habitual felon law in every case in which it applies, while others are selective in its application, viewing it as "disproportionate" in many cases); see also Paul H. Robinson et al., *The Five Worst (and Five Best) American Criminal Codes*, 95 NW. U. L. REV. 1, 16 (2000) ("Some people might cite prosecutorial discretion as a panacea for any legislative overreaching. However, such discretion is as likely to exacerbate as to counteract the dangers of over-criminalization, and, in any event, blind reliance on discretion at any level only opens the door to the type of selective, disparate treatment that adjudication rules should combat.").

119. The most recent data available indicate that there are forty-four district attorneys and 641 assistant district attorneys in North Carolina, handling over two million cases in the district courts and over 130,000 in the superior courts each year, meaning that the average prosecutor is responsible for over 3,000 cases per year. N.C. ADMIN. OFFICE OF THE COURTS, NORTH CAROLINA JUDICIAL BRANCH ANNUAL REPORT 9, 11-12 (2013), available at http://www.nccourts.org/Citizens/Publications/Documents/2012_2013_north_

prosecutors by giving them leverage during plea negotiations,¹²⁰ or have characterized overcriminalization as the result of mutual back-scratching between prosecutors and legislators.¹²¹ That description unfairly impugns the prosecutors' motives, suggesting that they are focused on tactical gain rather than public safety, and it also fails to recognize the extent to which overcriminalization can actually be a burden on prosecutors. In short, while prosecutorial discretion helps check overcriminalization, it is not a complete cure, and it comes at a cost.

B. *Office of the Repealer*

North Carolina could strike more directly at overcriminalization by forming a permanent body charged with recommending criminal laws for repeal. The body could be created by the legislature or by the governor. There are several precedents for this. In Kansas, Governor Sam Brownback created an Office of the Repealer by executive order in January 2011.¹²² It has already recommended fifty-one statutes or administrative regulations for repeal.¹²³ In 2013, the Tennessee legislature created a similar office within its legislative staff that will make recommendations for repeal annually.¹²⁴

Even a temporary, rather than permanent, body could limit overcriminalization. For example, in 2001, Virginia tasked its crime commission with recommending criminal code changes.¹²⁵ In 2004, the state legislature endorsed the commission's first recommendation by removing twelve little-used offenses from the code.¹²⁶ This approach

carolina_judicial_branch_annual_report.pdf; see also Luna, *supra* note 116, at 795 (noting that prosecutors have huge caseloads and lack the time and resources to prosecute all the crimes that are brought to their attention).

120. See, e.g., Darryl K. Brown, *Prosecutors and Overcriminalization*, 6 OHIO ST. J. CRIM. L. 453, 453 (2009) ("Much of overcriminalization's effect is . . . [where] prosecutors use overlapping or excessive statutes to force plea bargains.").

121. See, e.g., Stuntz, *supra* note 71, at 510 (arguing that "the story of American criminal law is a story of tacit cooperation between prosecutors and legislators, each of whom benefits from more and broader crimes").

122. *Welcome to the Office of the Repealer*, KANSAS DEP'T OF ADMIN., <https://admin.ks.gov/offices/repealer> (last visited Aug. 29, 2014).

123. Tim Carpenter, *State 'Repealer' Lists 51 Objections*, TOPEKA CAP. J., Jan. 20, 2012, <http://cjonline.com/news/2012-01-20/state-repealer-lists-51-objections>.

124. *Welcome to the OLS Repealer*, OFF. OF LEGAL SERVICES, <http://www.capitol.tn.gov/joint/staff/legal/repealer.html> (last visited Aug. 29, 2014).

125. Brown, *supra* note 6, at 250.

126. *Id.* at 250-52 (describing Virginia's experience and noting a similar success in New Jersey, as well as efforts in several other states that have yet to bear fruit). See generally Virginia State Crime Comm'n, House Document No. 15, *The Reorganization and*

is similar to the one that, in North Carolina, resulted in the reclassification of minor motor vehicle offenses as infractions, and the one that led to the passage of the Justice Reinvestment Act.¹²⁷

C. *Scheduled Review of Little-Used Laws*

Finally, the General Assembly could make a commitment to consider periodically whether there is a continued need for any criminal statute that sees little use. For example, it might agree to evaluate the necessity of any criminal statute that has not been charged more than ten times per year over the preceding four years. The Administrative Office of the Courts keeps charging data, so this would be easy to do.¹²⁸

The General Assembly recently implemented a similar mechanism designed to reduce the proliferation of unnecessary regulations.¹²⁹ In the 2013 legislative session, it enacted a statute requiring relevant state agencies to review their administrative rules at least once every ten years, in order to identify unnecessary rules.¹³⁰ Rules not timely reviewed according to the procedure set forth in the statute automatically expire.¹³¹

Recommending such a review—or even conducting such a review—might fall within the very broad charge given to the North Carolina General Statutes Commission.¹³² Alternatively, a joint committee of the two legislative chambers could be created to

Restructuring of Title 18.2 (2004) (providing the governor and General Assembly with suggested changes to the criminal code).

127. The reclassification of minor motor vehicles as infractions resulted in part from recommendations made by the Courts Commission. See *supra* notes 35–37 and accompanying text. The Justice Reinvestment Act was the product of a “bipartisan, interbranch work group.” Alison Lawrence, *Justice Reinvestment North Carolina*, NAT’L CONF. OF ST. LEGISLATURES (Mar. 4, 2014), <http://www.ncsl.org/research/civil-and-criminal-justice/justice-reinvestment-in-north-carolina.aspx>. The Council of State Governments played a key role in collecting relevant data and making recommendations. MARKHAM, *supra* note 39, at 1–2.

128. See *supra* note 21.

129. Act of Aug. 23, 2013, ch. 413, §§ 1–4, 2013 N.C. Sess. Laws 1698, 1700–03 (codified at N.C. GEN. STAT. § 150B-21.3A (2013)).

130. § 3.(b), 2013 N.C. Sess. Laws at 1701–02 (codified at N.C. GEN. STAT. § 150B-21.3A(c) (2013)).

131. § 3.(b), 2013 N.C. Sess. Laws at 1702 (codified at N.C. GEN. STAT. § 150B-21.3A(d) (2013)).

132. The Commission is charged with “mak[ing] a continuing study of all matters involved in the preparation and publication of modern codes of law” and “recommend[ing] to the General Assembly the enactment of such substantive changes in the law as the Commission may deem advisable.” N.C. GEN. STAT. § 164-13 (2013).

manage the review process, as the Administrative Procedure Oversight Committee oversees the administrative rule review process.¹³³ A variety of state agencies and other organizations—from the Administrative Office of the Courts to the North Carolina Bar Association to the School of Government—might be asked to play a role in identifying and evaluating candidates for repeal.¹³⁴

CONCLUSION

A comparative evaluation of the states' criminal codes ranked North Carolina's code as only the forty-third most effective code in the United States.¹³⁵ Overcriminalization was one factor in that ranking, and overcriminalization is a problem for North Carolina. Our criminal code is large and growing rapidly. Many of its provisions, both old and new, are of little use. Some are even unconstitutional. This proliferation of criminal laws makes the law more difficult for citizens to comprehend, and more difficult for the courts to apply. Despite these harms, overcriminalization exists as a result of political pressures and a political process that produce new and more stringent laws easily, but that are slow to remove outdated or useless provisions. North Carolina is not unique in facing this problem, but fortunately has laid the groundwork for some possible solutions, including establishing an office charged with repealing unnecessary laws or conducting a scheduled review of rarely used provisions.

In North Carolina, as in other states, criminal laws accumulate easily and dissipate slowly. Like the old clothes and dusty exercise equipment that slowly fill our closets, basements, and attics, our criminal code is filling up with archaic and unnecessary laws. We need to find a way to clean house.

133. See N.C. GEN. STAT. § 120-70.101 (2013).

134. For example, the American Bar Association has established a task force on overcriminalization. Task Force on Overcriminalization, A.B.A., <http://www.americanbar.org/groups/litigation/initiatives/overcriminalization.html> (last visited Aug. 29, 2014). However, this effort appears to have been undertaken on the ABA's own initiative, rather than at the invitation of a legislature. See *id.*

135. Robinson et al., *supra* note 118, at 60–61 (ranking states' codes based on five major factors, including whether the codes accurately assess criminal liability; that factor includes consideration of whether the codes inappropriately contain trivial offenses or otherwise criminalize conduct that is not wrongful).

APPENDIX I. CRIMES CREATED IN NORTH CAROLINA, 2008–2013

Methodology

The list below was generated by searching North Carolina session laws in the relevant time period for the terms “felony” and “misdemeanor,” and manually examining each result to determine whether the bill created any new offenses. The list is organized by bill, not by offense, and some bills create multiple offenses as indicated.

The list does not include bills that upgraded crimes from one offense class to another, nor bills that downgraded offenses from one category to another. Those bills are compiled in Appendix II. Similarly, the list does not include bills that expanded the scope of existing offenses, though such bills appeared to be common in the study period.¹³⁶ Nor does it include bills that eliminated offenses, though a few such bills were enacted during the relevant time.¹³⁷ Finally, the list does not include bills that rearranged a statute without creating a new crime.¹³⁸

In compiling this list, it was sometimes necessary to make judgment calls. In some instances, it was not obvious whether a bill

136. See, e.g., Act of June 10, 2013, ch. 170, 2013 N.C. Sess. Laws 446 (codified at N.C. GEN. STAT. § 14-118.6(a) (2013)) (expanding the false liens statute to encompass false liens against immediate family members of public employees as well as the employees themselves); Act of Aug. 7, 2009, ch. 460, 2009 N.C. Sess. Laws 1196 (providing the same special protections to search and rescue animals as currently provided to police animals and assistance animals under certain criminal statutes); Act of June 26, 2009, ch. 200, 2009 N.C. Sess. Laws 306 (adding multiple new rules for secondary metals recyclers; rules violations are punishable as Class 1 misdemeanors for first offenses and Class I felonies for second or subsequent offenses); Act of June 15, 2009, ch. 107, 2009 N.C. Sess. Laws 192 (codified at N.C. GEN. STAT. § 14-230 (2013)) (making it a misdemeanor for certain public officials willfully to fail to discharge their duties, and expanding it to cover school board members); Act of July 11, 2008, ch. 93, 2008 N.C. Sess. Laws 134 (amending N.C. GEN. STAT. § 50B-4.1(f) so that enhanced penalties for habitual violation of a domestic violence protective order apply beginning with the third offense rather than the fourth offense).

137. See, e.g., Act of June 23, 2011, ch. 248, 2011 N.C. Sess. Laws 938 (codified at N.C. GEN. STAT. § 115C-288(g) (2013)) (removing criminal penalty for failure by a principal to report to law enforcement certain acts when they take place on school property); Unborn Victims of Violence Act/Ethen's Law, ch. 60, 2011 N.C. Sess. Laws 79, 81 (repealing former N.C. GEN. STAT. § 14-18.2, concerning injury to pregnant woman, while creating several new offenses concerning unborn children); Act of Aug. 3, 2008, ch. 167, 2008 N.C. Sess. Laws 648 (codified at N.C. GEN. STAT. § 14-277.3A (2013)) (eliminating former stalking offense while creating several new stalking-related crimes).

138. See, e.g., Act of Aug. 7, 2009, ch. 463, 2009 N.C. Sess. Laws 1212 (codified at N.C. GEN. STAT. § 90-95(h) (2013)) (rearranging the drug-trafficking statute to split trafficking in methamphetamine into a separate subsection from trafficking in amphetamines).

created a single new crime that could be committed in several ways, or several distinct offenses. Likewise, in some cases it was debatable whether a bill created a new crime or simply expanded the scope of an existing one. Reasonable minds could differ over several of the decisions embodied in the list below, but the list generally reflects a cautious approach regarding the counting of new crimes.

2008 FELONIES

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2008-15	Amends G.S. 14-144 (injury to real property) to make offenses involving over \$5,000 in damage Class I felonies. Other offenses remain Class 2 misdemeanors. ¹³⁹	1
S.L. 2008-117	Enacts new G.S. 14-27.2A (rape of a child by an adult) and new G.S. 14-27.4A (sex offense with a child by an adult), both Class B1 felonies, and enacts new G.S. 14-208.18 (sex offender unlawfully on premises), a Class H felony. ¹⁴⁰	3
S.L. 2008-122	Adds new subsection (c) to G.S. 14-309, making gambling offenses involving five or more machines a Class G felony; first-time gambling offenses involving fewer than five machines remain a Class 1 misdemeanor. ¹⁴¹	1

139. Act of June 25, 2008, ch. 103, § 1, 2008 N.C. Sess. Laws 16, 16-17 (codified as amended at N.C. GEN. STAT. § 14-144 (2013)).

140. Act of July 28, 2008, ch. 117, §§ 1, 2, 12, 2008 N.C. Sess. Laws 426, 426-27, 432-33 (codified at N.C. GEN. STAT. §§ 14-27.2A, -27.4A, -208.18 (2013)).

141. Act of July 28, 2008, ch. 122, § 3, 2008 N.C. Sess. Laws 464, 465 (codified at N.C. GEN. STAT. § 14-309 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2008-128	Amends G.S. 20-166 (hit and run) to create a new offense of hit and run from an accident involving serious bodily injury, a Class F felony. Hit and run from other injury accidents remains a Class H felony. ¹⁴²	1
S.L. 2008-167	Enacts new G.S. 14-277.3A, making stalking a Class A1 misdemeanor, repeat stalking a Class F felony, and stalking in violation of a domestic violence protective order a Class H felony. Also repeals the previous stalking statute, G.S. 14-277.3. ¹⁴³	2
S.L. 2008-191	Amends G.S. 14-318.4 (felony child abuse) by adding new subsections (a4) (grossly negligent omission leading to serious bodily injury, Class E felony) and (a5) (grossly negligent omission leading to serious physical injury, Class H felony). ¹⁴⁴	2
S.L. 2008-214	Enacts new G.S. 14-39.4 (discharging firearm within enclosure), a Class E felony; enacts new G.S. 14-40.14 <i>et seq.</i> , creating the following new felonies: <ul style="list-style-type: none"> • acquiring property through street gang activity, Class H; 	8

142. Act of July 28, 2008, ch. 128, § 1, 2008 N.C. Sess. Laws 496, 497 (codified at N.C. GEN. STAT. § 20-166 (2013)).

143. Act of Aug. 3, 2008, ch. 167, 2008 N.C. Sess. Laws 648 (codified at N.C. GEN. STAT. § 14-277.3A (2013)).

144. Act of Aug. 8, 2008, ch. 191, § 2, 2008 N.C. Sess. Laws 812, 813 (codified at N.C. GEN. STAT. § 14-318.4 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	<ul style="list-style-type: none"> • acquiring property as manager of street gang activity, Class F; • soliciting a person sixteen or over into street gang activity, Class H; • soliciting a person under sixteen into street gang activity, Class F; • threats to prevent withdrawal from a street gang, Class H; • threats to retaliate for withdrawal from a street gang, Class H; and • committing a Class A1 misdemeanor in connection with street gang activity, Class I.¹⁴⁵ 	
S.L. 2008-218	Enacts new G.S. 14-202.5, making it a Class I felony for certain sex offenders to access commercial social networking websites. Amends G.S. 14-202.3 (solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), by creating an aggravated Class G version of the offense when the defendant arrives at the planned meeting location. ¹⁴⁶	2
	Total New Felonies Created in 2008:	20

145. Act of Aug. 15, 2008, ch. 214, §§ 2, 3, 2008 N.C. Sess. Laws 935, 936–37, (codified at N.C. GEN. STAT. §§ 14-34.9, -50.16 to -50.22 (2013)).

146. Act of Aug. 16, 2008, ch. 218, §§ 5, 6, 2008 N.C. Sess. Laws 947, 949 (codified at N.C. GEN. STAT. §§ 14-202.3, -202.5 (2013)).

2008 MISDEMEANORS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2008-18	Local act prohibits most roadside hunting in Jackson County: a first offense is a Class 3 misdemeanor, while a subsequent offense is a Class 2 misdemeanor. ¹⁴⁷	2
S.L. 2008-19	Local act prohibits spotlighting deer in Jackson County: a first offense is a Class 3 misdemeanor, while a subsequent offense is a Class 2 misdemeanor. ¹⁴⁸	2
S.L. 2008-50	Local act makes it a Class 3 misdemeanor to hunt from the roadside or right-of-way in Martin County. ¹⁴⁹	1
S.L. 2008-100	Local act makes it a Class 3 misdemeanor “to operate a vessel at greater than a no-wake speed in the Intracoastal Waterway adjacent to the Town of Holden Beach and the Town of Oak Island within 1,000 feet of the center of the intersection of the inlet at the Lockwood Folly River.” ¹⁵⁰	1

147. Act of June 26, 2008, ch. 18, 2008 N.C. Sess. Laws 19.

148. Act of June 26, 2008, ch. 19, 2008 N.C. Sess. Laws 19.

149. Act of July 3, 2008, ch. 50, §§ 2, 4, 6, 2008 N.C. Sess. Laws 96, 96.

150. Act of July 15, 2008, ch. 100, 2008 N.C. Sess. Laws 159.

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2008-120	Enacts new G.S. 113-300.8, making it a Class 1 misdemeanor to hunt or fish in North Carolina while a person's license is suspended under the Interstate Wildlife Violator Compact. ¹⁵¹	1
S.L. 2008-143	Enacts new G.S. 143-355.3, giving the Secretary of the Department of Environment and Natural Resources the authority to impose emergency water conservation measures. Under new G.S. 143-355.6(d), certain violations of such measures are Class 1 misdemeanors. ¹⁵²	1
S.L. 2008-150	Enacts new G.S. 163-278.40J, requiring certain candidates and campaign committees involved in municipal politics to file reports. Amends G.S. 163-278.27(a) to make violations a Class 2 misdemeanor. ¹⁵³	1
S.L. 2008-166	Amends G.S. 131D-2(a)(7a) to make it a Class 3 misdemeanor to operate a "multiunit housing with services program" without registering with the Division of Health Service Regulation as required. ¹⁵⁴	1

151. Act of July 28, 2008, ch. 120, 2008 N.C. Sess. Laws 456, 463 (codified at N.C. GEN. STAT. § 113-300.8 (2013)).

152. Act of July 31, 2008, ch. 143, §§ 8, 11, 2008 N.C. Sess. Laws 563, 574-77 (codified at N.C. GEN. STAT. §§ 143-355.3, -355.6(d) (2013)).

153. Act of Aug. 2, 2008, ch. 150, §§ 9.(a), 9.(b), 2008 N.C. Sess. Laws 605, 614-15 (codified at N.C. GEN. STAT. §§ 163-278.40J, -278.27(a) (2013)).

154. Act of Aug. 3, 2008, ch. 166, 2008 N.C. Sess. Laws 646, 646-47.

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2008-167	Enacts new G.S. 14-277.3A, making stalking a Class A1 misdemeanor; creates two stalking-related felonies, as noted above; repeals the previous stalking statute, G.S. 14-277.3. ¹⁵⁵	1
S.L. 2008-204	Allows the University of North Carolina to create an airport authority. Under new G.S. 116-274, such an authority would have the power to create rules and regulations regarding vehicular traffic at the airport, and violations of such rules and regulations would be Class 3 misdemeanors. ¹⁵⁶	1
S.L. 2008-224	Adds new subsections (b1) and (b2) to G.S. 90-634, making it a Class 3 misdemeanor to open a bodywork school without authorization. ¹⁵⁷	1
	Total New Misdemeanors Created in 2008:	13

155. Act of Aug. 3, 2008, ch. 167, 2008 N.C. Sess. Laws 648, 648–49 (codified at N.C. GEN. STAT. § 14-277.3A (2013)).

156. Act of Aug. 8, 2008, ch. 204, § 4.2, 2008 N.C. Sess. Laws 870, 876.

157. Act of Aug. 17, 2008, ch. 224, § 18, 2008 N.C. Sess. Laws 968, 977 (codified at N.C. GEN. STAT. § 90-634 (2013)).

2009 FELONIES

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2009-147	Amends G.S. 20-217(g) (penalty for passing stopped school bus) by making violations resulting in death a Class H felony; nonfatal violations remain Class I felonies. ¹⁵⁸	1
S.L. 2009-203	Adds new subsection (i) to G.S. 15A-268 (concerning the preservation of biological evidence in criminal cases), making it a Class I felony to intentionally and with an improper purpose destroy or tamper with biological evidence that must be preserved in connection with a noncapital case, and a Class H felony to do the same regarding a capital case. ¹⁵⁹	2
S.L. 2009-204	Enacts new G.S. 14-160.2, making it unlawful (a) to alter, destroy or remove a gun's serial number; or (b) to sell, buy, or possess a gun with a defaced or removed serial number. Any violation is a Class H felony. ¹⁶⁰	2
S.L. 2009-379	Enacts new G.S. 14-72.8, making it a Class I felony to steal a motor vehicle part if the cost of repairing the motor vehicle,	1

158. Act of June 22, 2009, ch. 147, § 1, 2009 N.C. Sess. Laws 236, 236–37 (codified as amended at N.C. GEN. STAT. § 20-217(g) (2013)).

159. Act of June 26, 2009, ch. 203, § 4, 2009 N.C. Sess. Laws 316, 318–21 (codified as amended at N.C. GEN. STAT. § 15A-268(i) (2013)).

160. Act of June 26, 2009, ch. 204, § 2, 2009 N.C. Sess. Laws 323 (codified at N.C. GEN. STAT. § 14-160.1 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	including the replacement part, is \$1,000 or more. ¹⁶¹	
S.L. 2009-415	Enacts new G.S. 14-226.3, making it unlawful to remove or destroy a monitoring device used in connection with specified criminal justice purposes, such as pretrial release or probation. A violation by a convicted felon is a felony one class lower than the most serious underlying felony. ¹⁶²	1
S.L. 2009-491	Enacts new G.S. 20-27.1, making it a Class F felony for a person to drive a commercial passenger vehicle or a school bus when the person lacks the appropriate license because the person is a sex offender and enacts new G.S. 20-37.14A, prohibiting the Division of Motor Vehicles from issuing or renewing certain Commercial Driver's Licenses for sex offenders, and making it a Class I felony for a person to swear falsely that he or she is not a sex offender in connection with obtaining a Commercial Driver's License. ¹⁶³	2
S.L. 2009-508	Amends G.S. 14-135 (cutting, injuring, or removing another's timber), formerly a Class 1 misdemeanor in all cases, so that it	1

161. Act of July 31, 2009, ch. 379, 2009 N.C. Sess. Laws 721 (codified at N.C. GEN. STAT. § 14-72.8 (2013)).

162. Act of Aug. 5, 2009, ch. 415, 2009 N.C. Sess. Laws 803 (codified at N.C. GEN. STAT. § 14-226.3 (2013)).

163. Act of Aug. 26, 2009, ch. 491, §§ 4, 6, 2009 N.C. Sess. Laws 1324, 1325-26 (codified at N.C. GEN. STAT. §§ 20-27.1, -37.14A (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	is a Class H felony if the value of the timber is more than \$1,000. ¹⁶⁴	
S.L. 2009-554	Adds new subsection (e) to G.S. 108A-63, making it a Class H felony for a medical provider to defraud the Medical Assistance Program. The bill also makes conspiring to do so a Class I felony, but because the punishment for conspiracy is consistent with the general scheme in G.S. 14-2.4 (making conspiracy punishable one offense class lower than the substantive offense), the conspiracy provision is not counted as a new offense. ¹⁶⁵	1
	Total New Felonies Created in 2009:	11

164. Act of Aug. 26, 2009, ch. 508, 2009 N.C. Sess. Laws 1350 (codified at N.C. GEN. STAT. § 14-135 (2013)).

165. Act of Aug. 28, 2009, ch. 554, § 3, 2009 N.C. Sess. Laws 1518, 1528 (codified as amended at N.C. GEN. STAT. § 108A-63(e) (2013)).

2009 MISDEMEANORS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2009-22	Local act makes it a Class 3 misdemeanor to hunt on another's land without permission in Edgecombe County; a subsequent offense is a Class 2 misdemeanor. ¹⁶⁶	2
S.L. 2009-37	Enacts new G.S. 14-86.2, making it a Class 1 misdemeanor to steal, deface, or vandalize a chemical or portable toilet or pumper truck. ¹⁶⁷	1
S.L. 2009-45	Local act makes it a Class 2 misdemeanor to release dogs on another's property for hunting in Granville County without the property owner's written consent. ¹⁶⁸	1
S.L. 2009-116	Local act makes it a Class 3 misdemeanor for most people to "discharge a firearm from, on, or across the right-of-way of" a specific road in Craven County. ¹⁶⁹	1

166. Act of May 5, 2009, ch. 22, 2009 N.C. Sess. Laws 34.

167. Act of May 27, 2009, ch. 37, 2009 N.C. Sess. Laws 49 (codified at N.C. GEN. STAT. § 14-86.2 (2013)).

168. Act of May 28, 2009, ch. 45, 2009 N.C. Sess. Laws 57.

169. Act of June 16, 2009, ch. 116, 2009 N.C. Sess. Laws 200.

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2009-135	Enacts new G.S. 20-137.4A, making it unlawful to operate a vehicle while using a cell phone to text or read texts; most violations are infractions, but a violation while operating a school bus is a Class 2 misdemeanor. ¹⁷⁰	1
S.L. 2009-205	Enacts new G.S. 90-113.82, requiring that retailers sell glass tubes and splitters only from behind the counter and requiring retailers to keep records regarding the identity of purchasers; under new G.S. 90-113.83, a violation by a retailer is a Class 2 misdemeanor, while a violation by a person who gives a false statement to a retailer is a Class 1 misdemeanor. ¹⁷¹	2
S.L. 2009-261	Local act makes it a Class 3 misdemeanor to possess or take grass carp by bow and arrow from the Gaston or Roanoke Rapids reservoirs without a permit; applies only in Halifax, Northampton, and Warren counties. ¹⁷²	1
S.L. 2009-282	Adds new subsection (c3) to G.S. 75A-13.3, making it a Class 3 misdemeanor for any vessel livery service to lease personal	1

170. Act of June 19, 2009, ch. 135, § 2, 2009 N.C. Sess. Laws 220, 220–21 (codified at N.C. GEN. STAT. § 20-137.4A (2013)).

171. Act of June 26, 2009, ch. 205, § 1, 2009 N.C. Sess. Laws 324, 324–25 (codified at N.C. GEN. STAT. §§ 90-113.80 to .84 (2013)).

172. Act of July 9, 2009, ch. 261, 2009 N.C. Sess. Laws 407.

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	watercraft without providing basic safety instructions. ¹⁷³	
S.L. 2009-300	Enacts new G.S. 14-277.4A, making it a Class 2 misdemeanor to engage in targeted picketing at a residence in a way that will cause fear for an occupant's safety or substantial emotional distress. ¹⁷⁴	1
S.L. 2009-319	Adds new subsection (b1) to G.S. 20-183.8, making it a Class 3 misdemeanor for a person to perform a safety inspection or an emissions inspection without a license. ¹⁷⁵	1
S.L. 2009-344	Adds new subsections (b) and (c) to G.S. 14-422, making it (1) a Class A1 misdemeanor for a person to violate the reptile laws resulting in the death or serious injury of another, and (2) a Class A1 misdemeanor intentionally to release a non-native poisonous reptile. ¹⁷⁶	2
S.L. 2009-345	Enacts new G.S. 77-128, making it a Class 3 misdemeanor for "[a]ny owner or operator of a vessel that has a marine sanitation device [to fail to] maintain a record of the date of each pumpout of the marine sanitation device and the location of the pumpout facility" and enacts new	2

173. Act of July 10, 2009, ch. 282, § 2, 2009 N.C. Sess. Laws 447, 448 (codified as amended at N.C. GEN. STAT. § 75A-13.3(c3) (2013)). The current statute reflects a 2013 change that downgraded this misdemeanor to an infraction. N.C. GEN. STAT. § 75A-13.3(c3) (2013).

174. Act of July 17, 2009, ch. 300, 2009 N.C. Sess. Laws 477 (codified at N.C. GEN. STAT. § 14-227.4A (2013)).

175. Act of July 17, 2009, ch. 319, § 5, 2009 N.C. Sess. Laws 518, 521 (codified at N.C. GEN. STAT. § 20-183.8(b1) (2013)).

176. Act of July 27, 2009, ch. 344, 2009 N.C. Sess. Laws 586, 588 (codified at N.C. GEN. STAT. § 14-422 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	G.S. 77-129, making it a Class 1 misdemeanor to "discharge treated or untreated sewage into coastal waters." ¹⁷⁷	
S.L. 2009-374	Enacts new G.S. 53-244.112, making it a Class 3 misdemeanor to engage in the mortgage business or to act as a loan originator with no license. ¹⁷⁸	1
S.L. 2009-380	Enacts new G.S. 15A-1340.50, providing for permanent no contact orders regarding sex offenders and their victims, and making a knowing violation of such an order a Class A1 misdemeanor. ¹⁷⁹	1
S.L. 2009-415	Enacts new G.S. 14-226.3, making it unlawful to remove or destroy a monitoring device used in connection with specified criminal justice purposes, such as pretrial release or probation. A violation by a convicted misdemeanant is a misdemeanor one class lower than the most serious underlying misdemeanor. ¹⁸⁰	1
S.L. 2009-434	Enacts new G.S. 90-677.3, making it a Class 1 misdemeanor to practice polysomnography without a license, to	1

177. Clean Coastal Water and Vessel Act, ch. 345, § 1, 2009 N.C. Sess. Laws 589, 589-91 (codified at N.C. GEN. STAT. §§ 77-125 to -132 (2013)).

178. Secure and Fair Enforcement Mortgage Licensing Act, ch. 374, § 2, 2009 N.C. Sess. Laws 681, 701 (codified at N.C. GEN. STAT. § 53-244.112 (2013)).

179. Act of July 31, 2009, ch. 380, 2009 N.C. Sess. Laws 721 (codified at N.C. GEN. STAT. § 15A-1340.50 (2013)).

180. Act of Aug. 5, 2009, ch. 415, 2009 N.C. Sess. Laws 803 (codified at N.C. GEN. STAT. § 14-226.3 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	make false representations regarding licensure, or to use the title or initials of a licensed practitioner; because of unified punishment scheme, these appear to be aspects of a single offense. ¹⁸¹	
S.L. 2009-445	Amends G.S. 105-330.3(d), making it a Class 2 misdemeanor to evade motor vehicle taxes. ¹⁸²	1
S.L. 2009-462	Enacts new G.S. 131D-2.6, making it a Class 3 misdemeanor for any person to operate an adult care facility subject to licensure without a license; adds new subsection (b) to G.S. 131D-2.5, making it a Class 3 misdemeanor for any person to operate a “multiunit assisted housing with services program” without registering. ¹⁸³	2
S.L. 2009-538	Enacts new G.S. 14-401.23, making it unlawful to possess, manufacture, sell, or deliver salvia divinorum: the first two violations are infractions, but a third or subsequent violation is a Class 3 misdemeanor. This bill criminalizes many different acts regarding salvia, including some that in the context of controlled substances are distinct offenses, such as possession and sale, but it creates a unified	1

181. Polysomnography Practice Act, ch. 434, § 1, 2009 N.C. Sess. Laws 840, 842 (codified at N.C. GEN. STAT. § 90-723 (2013) (renumbered by the Revisor of the Statutes)).

182. Act of Aug. 7, 2009, ch. 445, § 24(a), 2009 N.C. Sess. Laws 866, 887–88 (codified as amended at N.C. GEN. STAT. § 105-330.3(d) (2013)).

183. Act of Aug. 7, 2009, ch. 462, §§ 1(e), 3(b), 2009 N.C. Sess. Laws 1199, 1204, 1209 (codified at N.C. GEN. STAT. §§ 131D-2.5(b), -2.6 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	punishment scheme, so it is counted conservatively as creating one offense. ¹⁸⁴	
S.L. 2009-551	Enacts G.S. 14-458.1, which makes it a Class 2 misdemeanor (Class 1 if the defendant is over 18) to use a computer to torment a minor (in four specified ways), to torment a minor or the minor's parents (in three specified ways), or to do certain other listed activities related to cyberbullying. ¹⁸⁵	2
S.L. 2009-560	Adds subsections (c), (d), and (e) to G.S. 14-258.1, making it a Class 1 misdemeanor to provide tobacco products or cell phones to inmates and for inmates to possess tobacco products or cell phones. ¹⁸⁶	3
	Total New Misdemeanors Created in 2009:	29

184. Act of Aug. 28, 2009, ch. 538, 2009 N.C. Sess. Laws 1459 (codified at N.C. GEN. STAT. § 14-410.23 (2013)).

185. Act of Aug. 28, 2009, ch. 551, § 1, 2009 N.C. Sess. Laws 1510 (codified as amended at N.C. GEN. STAT. § 14-458.1 (2013)).

186. Act of Aug. 28, 2009, ch. 560, § 3, 2009 N.C. Sess. Laws 1543, 1544-45 (codified at N.C. GEN. STAT. § 14-258.1 (2013)).

2010 FELONIES

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2010-5	Amends G.S. 50B-4.1 by adding new subsection (g1), making it a Class H felony for any person who is the subject of a valid domestic violence protective order to enter a safe house where a person protected by the order resides. ¹⁸⁷	1
S.L. 2010-103	Enacts new G.S. 14-306.4, which prohibits certain electronic sweepstakes operations: a first offense is a misdemeanor, but a second offense is a Class H felony, and a third or subsequent offense is a Class G felony. ¹⁸⁸	2
S.L. 2010-132	Amends G.S. 20-79.2 by adding new subdivision (b2)(4), making it a Class I felony for a person to sell or rent a transporter plate to another person. ¹⁸⁹	1
S.L. 2010-169	Amends G.S. 163-278.27 by adding new subdivision (a2), making it a Class I felony for a person intentionally to violate G.S. 163-278.14(a) (prohibiting anonymous campaign contributions or contributions in the name of another), or G.S. 163-278.19(a) (restrictions on contributions by	2

187. Act of June 7, 2010, ch. 5, § 1, 2010 N.C. Sess. Laws 5, 5 (codified at N.C. GEN. STAT. § 50B-4.1(g1) (2013)).

188. Act of July 20, 2010, ch. 103, § 1, 2010 N.C. Sess. Laws 408, 408–410 (codified at N.C. GEN. STAT. § 14-306.4 (2013)).

189. Act of July 21, 2010, ch. 132, § 6, 2010 N.C. Sess. Laws 492, 497–99 (codified at N.C. GEN. STAT. § 20-79.2(b2)(4) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	labor unions, corporations, etc.), when the unlawful contributions total more than \$10,000; violations of these statutes involving less than the threshold amount remain Class 2 misdemeanors. ¹⁹⁰	
	Total New Felonies Created in 2010:	6

2010 MISDEMEANORS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2010-103	Enacts new G.S. 14-306.4, which prohibits certain electronic sweepstakes operations. A first offense is a Class 1 misdemeanor and subsequent offenses are felonies. ¹⁹¹	1
S.L. 2010-108	Enacts new G.S. 14-415.4, which allows certain nonviolent felons to obtain a restoration of their right to possess a firearm; subsection (l) makes it a Class 1 misdemeanor to submit false information	1

190. Act of Aug. 2, 2010, ch. 169, § 6(a), 2010 N.C. Sess. Laws 638, 640 (codified at N.C. GEN. STAT. § 163-278.27(a2) (2013)).

191. Act of July 20, 2010, ch. 103, § 1, 2010 N.C. Sess. Laws 408, 408-10 (codified at N.C. GEN. STAT. § 14-306.4 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	in connection with a petition for a restoration of rights. ¹⁹²	
S.L. 2010-141	Enacts new Article 2 in Chapter 93E of the General Statutes, regulating “real estate appraisal management companies;” the statute contains a large number of requirements, such as registering with the North Carolina Appraisal Board, paying a registration fee, appointing a compliance manager, and avoiding the sixteen prohibited acts detailed in G.S. 93E-2-7(a); new G.S. 93E-2-10 makes any violation of the Article a Class 1 misdemeanor. ¹⁹³	1
S.L. 2010-169	Amends G.S. 126-14 by adding new subsection (a1), making it a Class 2 misdemeanor for certain state employees to coerce others into supporting or contributing to a candidate by threatening adverse or promising preferential treatment for the others’ business with, or activities regulated by, the individual’s state office. ¹⁹⁴	1
S.L. 2010-180	Amends G.S. 130A-25, in part by adding new subsection (d), making it a Class 3 misdemeanor to violate G.S. 130A-309.10(m) (prohibiting knowing disposal	1

192. Act of July 20, 2010, ch. 108, § 1, 2010 N.C. Sess. Laws 414, 414–17 (codified as amended at N.C. GEN. STAT. § 14-415.4 (2013)).

193. Act of July 22, 2010, ch. 141, § 1, 2010 N.C. Sess. Laws 514, 514–522 (codified at N.C. GEN. STAT. §§ 93E-2-1 to -2-11 (2013)).

194. Act of Aug. 2, 2010, ch. 169, § 1(a), 2010 N.C. Sess. Laws 638, 638–39 (codified at N.C. GEN. STAT. § 126-14(a1) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	of fluorescent lights and thermostats in unlined landfills). ¹⁹⁵	
	Total New Misdemeanors Created in 2010:	5

2011 FELONIES

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2011-12	Adds several synthetic drugs to Schedule I; adds several synthetic cannabinoids to Schedule VI; enacts G.S. 90-95(h)(3d), creating three felony drug trafficking offenses concerning methylenedioxypyrovalerone ("MDPV"), with offense classes of F, E, and C depending on the quantity of the substance involved; enacts G.S. 90-95(h)(3e), creating three felony drug trafficking offenses concerning mephedrone, with offense classes of F, E, and C depending on the quantity of the substance involved; and enacts G.S. 90-95(h)(1a), creating four felony drug trafficking offenses concerning synthetic cannabinoids, with offense classes of H, G, F, and D depending on the quantity of the substance involved. ¹⁹⁶	10

195. Act of Aug. 2, 2010, ch. 180, § 14(d), 2010 N.C. Sess. Laws 717, 730 (codified at N.C. GEN. STAT. § 130A-25(d) (2013)).

196. Act of March 25, 2011, ch. 12, §§ 1, 3, 4, 5, 8, 2011 N.C. Sess. Laws 18, 18-22 (codified as amended at N.C. GEN. STAT. §§ 90-89(5), -94, -95(h) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2011-19	Adds new subsection (d) to G.S. 15A-903, making it a Class H felony to willfully omit or misrepresent evidence required to be disclosed under the criminal discovery statutes. ¹⁹⁷	1
S.L. 2011-60	Enacts the new Class A felony offenses of first-degree murder of an unborn child, G.S. 14-23.2(b)(1); the new felony of second-degree murder of an unborn child, G.S. 14-23.2(b)(2) (offense class per second-degree murder); the new Class D felony of voluntary manslaughter of an unborn child, G.S. 14-23.3; the new Class F felony of involuntary manslaughter of an unborn child, G.S. 14-23.4; and the new Class F felony of assault inflicting serious bodily injury on an unborn child, G.S. 14-23.5. ¹⁹⁸	5
S.L. 2011-193	Adds new subsection (c) to G.S. 14-401.22, which creates a Class I felony for disturbing or sexually penetrating human remains; adds new subsection (d) to G.S. 14-401.22, which creates a Class H felony for anyone attempting to conceal evidence of another's death by destroying human remains; adds new subsection (e) to G.S. 14-401.22, which creates a Class D felony for anyone attempting to conceal evidence of another's death by destroying	3

197. Forensic Sciences Act of 2011, ch. 19, § 9, 2011 N.C. Sess. Laws 25, 29–30 (codified as amended at N.C. GEN. STAT. § 15A-903 (2013)).

198. Unborn Victims of Violence Act, ch. 60, § 2, 2011 N.C. Sess. Laws 79, 79–81 (codified at N.C. GEN. STAT. §§ 14-23.1 to -23.8 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	human remains, knowing that the person did not die of natural causes. ¹⁹⁹	
S.L. 2011-194	G.S. 90-18 prohibits practicing medicine without a license; previously, it was a Class 1 misdemeanor except for out-of-state practitioners acting in North Carolina without a license, which was a Class I felony. This bill adds a Class I felony for a person who "is falsely representing himself or herself . . . as being licensed." ²⁰⁰	1
S.L. 2011-240	Enacts new G.S. 90-113.52A, which imposes electronic recordkeeping requirements on retailers selling pseudoephedrine products. Amends G.S. 90-113.56(a) to provide that a willful and knowing violation of G.S. 90-113.52A by a retailer is a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. Amends G.S. 90-113.56(b) to provide that a willful and knowing violation of G.S. 90-113.52A by a purchaser or employee is a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. ²⁰¹	2

199. Act of June 23, 2011, ch. 193, 2011 N.C. Sess. Laws 782 (codified as amended at N.C. GEN. STAT. § 14-401.22(c) to (f) (2013)).

200. Act of June 23, 2011, ch. 194, 2011 N.C. Sess. Laws 783 (codified at N.C. GEN. STAT. § 90-18(a) (2013)).

201. Act of June 23, 2011, ch. 240, §§ 2-3, 2011 N.C. Sess. Laws 912, 913-14 (codified at N.C. GEN. STAT. §§ 90-113.52A, -113.56 (a) to (b) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2011-268	Enacts new G.S. 14-408.1, which makes it unlawful to solicit an unlawful purchase of firearms from a dealer and makes it unlawful to provide materially false information regarding the legality of a firearm transfer; both are Class F felonies; they have separate punishment provisions and address distinct conduct, so they appear to be separate offenses. ²⁰²	2
S.L. 2011-356	Adds new subsection (c) to G.S. 14-34.7, creating the new Class I felony of assault inflicting physical injury on a law enforcement officer or specified others. ²⁰³	1
S.L. 2011-412	Enacts new G.S. 58-71-200, giving bondsmen access to criminal court records; making it unlawful to access the system under another's identifier; making it unlawful to allow others to use one's identifier; making it unlawful to access the system when one's bondsman's license is suspended/revoked; and making it unlawful to give out information obtained from the system. Any of the above is a Class H felony—because of the unified punishment scheme, this is conservatively considered a single offense that can be committed in multiple ways. ²⁰⁴	1
	Total New Felonies Created in 2011:	26

202. Act of June 23, 2011, ch. 268, § 11, 2011 N.C. Sess. Laws 1002, 1007–08 (codified at N.C. GEN. STAT. § 14-408.1 (2013)).

203. Act of June 27, 2011, ch. 356, § 1, 2011 N.C. Sess. Laws 1495, 1496 (codified at N.C. GEN. STAT. § 14-34.7(c) (2013)).

204. Act of Sept. 14, 2011, ch. 412, § 4.1, 2011 N.C. Sess. Laws 2126, 2131–32 (codified at N.C. GEN. STAT. § 58-71-200 (2013)).

2011 MISDEMEANORS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2011-12	Adds mephedrone, MDPV, and 1-amino-1-phenyl-1-propanone to Schedule I; like other Schedule I controlled substances, possession is generally a Class I felony, but the bill adds unique new language to G.S. 90-95(d)(1) making possession of 1 gram or less of MDPV a Class 1 misdemeanor. ²⁰⁵	1
S.L. 2011-19	Enacts new subsection (d) of G.S. 15A-903, making it a Class 1 misdemeanor willfully to omit or misrepresent certain information required to be produced in criminal discovery. ²⁰⁶	1
S.L. 2011-60	Enacts new G.S. 14-23.6, making battery on an unborn child a Class A1 misdemeanor. ²⁰⁷	1
S.L. 2011-145	Enacts new G.S. 106-847(a), codified as G.S. 106-877(a), making it a Class 3 misdemeanor to violate any "reasonable rules governing the use by the public of State forests"; enacts new G.S. 106-847(c) [note: codified as G.S. 106-877(c)], making it a Class 3 misdemeanor to violate any "reasonable rules" for "public service	3

205. Act of March 25, 2011, ch. 12, §§ 1–2, 2011 N.C. Sess. Laws 18, 19 (codified as amended at N.C. GEN. STAT. §§ 90-89, -95(d)(1) (2013)).

206. Forensic Sciences Act of 2011, ch. 19, § 9, 2011 N.C. Sess. Laws 25, 29–30 (codified at N.C. GEN. STAT. § 15A-903(d) (2013)).

207. Unborn Victims of Violence Act, ch. 60, § 2, 2011 N.C. Sess. Laws 79, 79–81 (codified at N.C. GEN. STAT. §§ 14-23.1 to -23.8 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	facilities and conveniences” authorized by the Department of Agriculture; adds new subsection (c) of G.S. 113-221.3, which makes it a Class 2 misdemeanor to remove or damage certain signs warning swimmers about water quality or to have such signs in one’s possession “without just cause or excuse.” ²⁰⁸	
S.L. 2011-152	Local act makes it a Class 3 misdemeanor to hunt from any vessel in the Tar River from Springfield Road to the Dunbar bridge. ²⁰⁹	1
S.L. 2011-232	Makes it a Class 1 misdemeanor for a person, with intent to defraud, to receive a decedent’s retirement allowance at least two months after the decedent’s death; creates separate offenses for each of the following retirement systems: <ul style="list-style-type: none"> • teachers and state employees, G.S. 135-18.11; • city and county employees, G.S. 128-38.5; • judicial officials, G.S. 135-75.2; and • legislative officials, G.S. 120-4.34.²¹⁰ 	4

208. Current Operations and Capital Improvements Appropriations Act of 2011, ch. 145, §§ 13.3(sss), 13.25(o), 2011 N.C. Sess. Laws 253, 433–34, 64 (codified at N.C. GEN. STAT. §§ 106-877, 113-221.3 (2013)).

209. Act of June 16, 2011, ch. 152, § 4(a)–(b), 2011 N.C. Sess. Laws 638, 638.

210. Act of June 23, 2011, ch. 232, § 10(a)–(d), 2011 N.C. Sess. Laws 889, 900 (codified as amended at N.C. GEN. STAT. §§ 135-18.11, 128-38.5, 135-75.2, 120-4.34 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2011-240	Enacts new G.S. 90-113.52A, which imposes electronic recordkeeping requirements on retailers selling pseudoephedrine products. Amends G.S. 90-113.56(a) to provide that a willful and knowing violation of G.S. 90-113.52A by a retailer is a Class A1 misdemeanor for the first offense and a Class I felony for a subsequent offense. Amends G.S. 90-113.56(b) to provide that a willful and knowing violation of G.S. 90-113.52A by a purchaser or employee is a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. ²¹¹	3
S.L. 2011-241	Enacts new laws concerning regional schools, including new G.S. 115C-238.56G(3), making it a Class 1 misdemeanor to aid or abet a student's unlawful absence from regional school; and new G.S. 115C-238.56N(h), making it a Class A1 misdemeanor for any applicant for employment at a regional school to give false information that is the basis for a criminal history record check. ²¹²	2
S.L. 2011-244	Enacts new G.S. 20-398, which requires that household goods carriers' vehicles be marked in certain places and methods, and makes a violation of the statute a Class 3	2

211. Act of June 23, 2011, ch. 240, §§ 2-3, 2011 N.C. Sess. Laws 912, 913-14 (codified as amended at N.C. GEN. STAT. §§ 90-113.52A, -113.56 (2013)).

212. Act of June 23, 2011, ch. 241, § 1, 2011 N.C. Sess. Laws 914, 916-17, 920-22 (codified at N.C. GEN. STAT. §§ 115C-238.66, -238.73 (2013) (renumbered by the Revisor of the Statutes)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	misdemeanor; enacts new G.S. 62-280.1, making it a Class 3 misdemeanor for a person with no certificate to operate as a carrier of household goods to represent that they have one to operate as a carrier of household goods, either orally, in writing, or by use of symbols. ²¹³	
S.L. 2011-263	Generally, the bill requires local governments to use the federal E-Verify program to determine the work authorization of new employees; it also provides a complaint mechanism for those who believe that a local government is not complying; new G.S. 64-28(b) makes it a Class 2 misdemeanor to knowingly file a false and frivolous complaint. ²¹⁴	1
S.L. 2011-313	Adds new subsections (b) and (b1) to G.S. 68-25, making it a Class 3 misdemeanor for a person to permit his or her domestic fowls to run at large on commercial-poultry-operation lands, or for a person who owns a commercial poultry operation to permit the operation's fowls to run at large on adjoining property after notice. ²¹⁵	2
S.L. 2011-336	Amends G.S. 84-8, which makes the unauthorized practice of law a misdemeanor, so that the misdemeanor	1

213. Act of June 23, 2011, ch. 244, 2011 N.C. Sess. Laws 927 (codified at N.C. GEN. STAT. §§ 20-398, 62-280 to -280.1 (2013)).

214. Act of June 23, 2011, ch. 263, § 3, 2011 N.C. Sess. Laws 975, 975-77 (codified as amended at N.C. GEN. STAT. §§ 64-25 to -38 (2013)).

215. Act of June 27, 2011, ch. 313, 2011 N.C. Sess. Laws 1243 (codified as amended at N.C. GEN. STAT. § 68-25 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	punishment applies to violations of G.S. 84-9, which makes it unlawful for anyone but an attorney to appear "for another in any bankruptcy . . . proceeding." ²¹⁶	
S.L. 2011-355	Enacts new G.S. 90-12.1B(e), making it a Class 3 misdemeanor for the holder of a "retired limited volunteer" physician license to practice at any place other than a clinic specializing in the treatment of indigent patients; enacts new G.S. 90-12.4A(e), a similar provision for physician assistants holding a limited volunteer license; enacts new G.S. 90-12.4B(e), a similar provision for physician assistants holding a "retired limited volunteer license." ²¹⁷	3
S.L. 2011-369	Enacts new G.S. 113-291.12, making it unlawful to remove feral swine from a trap while still alive or to transport such a swine, and adds new subsection (s) to G.S. 113-294, making violations of the aforementioned provisions Class 2 misdemeanors; the statute expressly provides that trap removal and transport are separate offenses. ²¹⁸	2
S.L. 2011-381	Enacts new G.S. 20-17.8A, making it a Class 1 misdemeanor to tamper with or	1

216. Act of June 27, 2011, ch. 336, § 4, 2011 N.C. Sess. Laws 1317, 1319-20 (codified at N.C. GEN. STAT. § 84-8 (2013)).

217. Act of June 27, 2011, ch. 355, §§ 2-4, 2011 N.C. Sess. Laws 1491, 1492-93 (codified at N.C. GEN. STAT. §§ 90-12.1B, -12.4, -12.4B (2013)).

218. Act of June 27, 2011, ch. 369, § 6(a)-(b), 2011 N.C. Sess. Laws 1511, 1513 (codified as amended at N.C. GEN. STAT. §§ 113-291.12, -294 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	circumvent or attempt to circumvent an ignition interlock device required as a condition to operate a vehicle. ²¹⁹	
S.L. 2011-408	Adds new subsection (e) to G.S. 136-32, making it a Class 3 misdemeanor for a person to steal, deface, vandalize, or unlawfully remove a political sign that is lawfully placed in a highway right of way. ²²⁰	1
	Total New Misdemeanors Created in 2011:	29

2012 FELONIES

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2012-38	Enacts new G.S. 14-10.1, defining the criminal offense of terrorism as an act of violence with the intent to intimidate the population or a group or influence through intimidation the conduct of the government; any violation is a felony one class higher than the offense that is the underlying class of violence. Amends G.S. 14-7.20 (continuing criminal enterprise) by adding new subsection (a1), creating a	2

219. Act of June 27, 2011, ch. 381, § 1, 2011 N.C. Sess. Laws 1537, 1537 (codified at N.C. GEN. STAT. § 20-17.8A (2013)).

220. Act of Aug. 4, 2011, ch. 408, 2011 N.C. Sess. Laws 2119 (codified at N.C. GEN. STAT. § 136-32 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	Class D felony offense of terrorism-related, continuing criminal enterprise. ²²¹	
S.L. 2012-46	<p>Section 28 of the bill amends Chapter 66 (regulation of sales and purchase of metals); new G.S. 66-424(a) provides that any person “knowingly and willfully” violating any of the provisions of new Part 3 of Chapter 66 is guilty of a Class 1 misdemeanor, and then a Class I felony if a repeat offense; there are a huge number of rules that are enforceable by these criminal penalties, including requirements regarding recordkeeping, receipts, the types of items that may and may not be purchased for recycling, payment methods, and so on; because of the single punishment provision, this is treated here as a single offense; also enacts new G.S. 14-159.4, concerning injuring property to obtain metals, which contains several new felony offenses as follows:</p> <ul style="list-style-type: none"> • Class F if damage exceeds \$10,000; • Class H if damage is \$1,000 to \$10,000; • Class F if serious bodily injury results; and • Class D if death results.²²² 	5
S.L. 2012-56	Enacts new G.S. 53C-8-7, making it a Class H felony for any examiner to make a false report of the condition of any bank	3

221. Act of June 20, 2012, ch. 38, 2012 N.C. Sess. Laws 119 (codified at N.C. GEN. STAT. §§ 14-10.1, -7.20 (2013)).

222. Act of June 20, 2012, ch. 46, §§ 28, 31, 2012 N.C. Sess. Laws 129, 136–42 (codified at N.C. GEN. STAT. §§ 66-420 to -430, 14-159.4 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	examined with the intent to aid the bank in committing violations, or to accept a bribe to not file a report or make an examination; conservatively, in light of the single punishment provision, this is treated as one offense; enacts new G.S. 53C-8-11, making it unlawful for any person with intent to defraud or injure a bank to embezzle bank funds, issue or sign certain bank documents in bad faith, make false entries in bank records, knowingly extend credit to an insolvent person, or make false reports about a bank's financial condition; such conduct is a Class C felony if more than \$100,000 is involved and otherwise is a Class H felony. ²²³	
S.L. 2012-127	Enacts new G.S. 14-79.2, making it a crime to "take and carry away" any container of waste kitchen grease with a sticker prohibiting removal of the grease contained therein, intentionally contaminate any waste kitchen grease container, or place a label on waste grease container if owned by another person; it is a Class H felony if the value of the waste kitchen grease container—or the container and the grease together—is more than \$1,000. ²²⁴	1

223. Act of June 21, 2012, ch. 56, § 4, 2012 N.C. Sess. Laws 154, 196–197 (codified at N.C. GEN. STAT. § 53C-8-7, -8-11) (2013)).

224. Act of June 29, 2012, ch. 127, § 6, 2012 N.C. Sess. Laws 422, 423 (codified at N.C. GEN. STAT. § 14-79.2 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2012-134	Amends G.S. 96-18(a) (prohibiting false statements to obtain or increase benefits under employment security law), making violations involving more than \$400 of benefits Class I felonies (all violations were Class 1 misdemeanors). ²²⁵	1
S.L. 2012-150	Enacts new G.S. 14-118.6 (filing false lien or encumbrance), a Class I felony. ²²⁶	1
S.L. 2012-153	Enacts new G.S. 14-43.14, making it a Class F felony to sell, surrender, or purchase a minor. ²²⁷	1
S.L. 2012-154	Amends G.S. 14-72 to make larceny a felony if the defendant has four prior larceny convictions. ²²⁸	1

225. Act of June 29, 2012, ch. 134, § 4(a), 2012 N.C. Sess. Laws 453, 459–60 (codified as amended at N.C. GEN. STAT. § 96-18(a) (2013)).

226. Act of July 12, 2012, ch. 150, § 4, 2012 N.C. Sess. Laws 719, 722–23 (codified as amended at N.C. GEN. STAT. § 14-118.6 (2013)).

227. Act of July 12, 2012, ch. 153, § 1, 2012 N.C. Sess. Laws 734, 734 (codified at N.C. GEN. STAT. § 14-43.14 (2013)).

228. Act of July 12, 2012, ch. 154, 2012 N.C. Sess. Laws 737 (codified at N.C. GEN. STAT. § 14-72 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2012-168	Amends G.S. 14-159.12, making first-degree trespass, normally a misdemeanor, a Class H felony if the offender intends to disrupt the operation of specified utility facilities or the offense involves an act that places the offender or others at risk of serious bodily injury. ²²⁹	1
	Total New Felonies Created in 2012:	16

2012 MISDEMEANORS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2012-12	Any person who violates a declaration or an executive order issued under the Governor's emergency powers is guilty of a Class 2 misdemeanor under new G.S. 166A-19.30(h) and new G.S. 14-288.20A; any person who violates an ordinance or declaration issued under municipal emergency authority is guilty of a Class 2 misdemeanor under new G.S. 166A-19.31(h) and new G.S. 14-288.20A; any person who willfully refuses to leave a public building pursuant to the Governor's order under new G.S. 166A-19.78 is guilty	3

229. Act of July 12, 2012, ch. 168, § 1, 2012 N.C. Sess. Laws 785, 785-86 (codified at N.C. GEN. STAT. § 14-159.12 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	of a Class 2 misdemeanor under new G.S. 14-288.20A. ²³⁰	
S.L. 2012-46	Section 28 of the bill amends Chapter 66 (regulation of sales and purchase of metals); new G.S. 66-424(a) provides that any person “knowingly and willfully” violating any of the provisions of new Part 3 of Chapter 66 is guilty of a Class 1 misdemeanor; there are a huge number of rules that are enforceable by these criminal penalties, including requirements regarding recordkeeping, receipts, the types of items that may and may not be purchased for recycling, payment methods, and so on; section 31 enacts new G.S. 14-159.4, prohibiting cutting or injuring others’ property to obtain nonferrous metals; if the loss in value or repairs necessary is less than \$1000, the violation is a Class 1 misdemeanor; when a person suffers serious injury, it is a Class A1 misdemeanor; when critical infrastructure is affected resulting in disruption of communications, electrical service to critical infrastructure or more than ten customers, then it is a Class 1 misdemeanor. ²³¹	4
S.L. 2012-56	Enacts new G.S. 53C-8-8, making unlawful disclosure of information obtained during a bank examination, by examiners or employees of the banking commission, a	3

230. North Carolina Emergency Management Act, ch. 12, 2012 N.C. Sess. Laws 26 (codified at N.C. GEN. STAT. §§ 14-288.20A, 166A-19.30(d), -19.31(h), -19.78 (2013)).

231. Act of June 20, 2012, ch. 46, §§ 28, 31, 2012 N.C. Sess. Laws 129, 136–42 (codified at N.C. GEN. STAT. §§ 66-420 to -430, 14-159.4 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	Class 1 misdemeanor; enacts new G.S. 53C-8-9, making it a Class 1 misdemeanor for a bank or employee to extend credit or give a gratuity to any bank examiner or commissioner; enacts new G.S. 53C-8-10, making it a Class 1 misdemeanor to make false statements derogatory to the financial condition of any bank. ²³²	
S.L. 2012-127	Enacts new G.S. 14-79.2, making it a crime to “take and carry away” any container of waste kitchen grease with a sticker prohibiting removal or the grease contained therein, intentionally contaminate any waste kitchen grease container, or place a label on waste grease container if owned by another person; if the value of the waste kitchen grease container—or the container and the grease together—is less than \$1,000, it is a Class 1 misdemeanor. ²³³	1
S.L. 2012-149	Enacts new G.S. 14-458.2, which makes it unlawful for any student to use a computer to intimidate or torment a school employee by doing a list of five things: to make a statement that would cause the employee to be harassed, to disseminate data about employee to intimidate him, to sign him up for certain internet services, or	1

232. Act of June 21, 2012, ch. 56, § 4, 2012 N.C. Sess. Laws 154, 196–97 (codified at N.C. GEN. STAT. §§ 53C-8-7, -8-11) (2013)).

233. Act of June 29, 2012, ch. 127, 2012 N.C. Sess. Laws 422 (codified at N.C. GEN. STAT. § 14-79.2 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
	to sign the employee up for mailing lists. Any violation is a Class 2 misdemeanor. ²³⁴	
S.L. 2012-168	Amends G.S. 14-159.12, making first-degree trespass a Class A1 misdemeanor (usually Class 2) if done on an electric, water, or energy storage facility. ²³⁵	1
S.L. 2012-190	Enacts new G.S. 113-187(e), providing that “[a]ny person who takes menhaden or Atlantic thread herring by use of purse seine net deployed by a mother ship and one or more runner boats in coastal fishing waters is guilty of a Class A1 misdemeanor.” ²³⁶	1
	Total New Misdemeanors Created in 2012:	14

234. Act of July 3, 2012, ch. 149, 2012 N.C. Sess. Laws 715, 715–17 (codified at N.C. GEN. STAT. § 14-458.2(c) (2013)).

235. Act of July 2, 2012, ch. 168 2012 N.C. Sess. Laws 785, 785–86 (codified at N.C. GEN. STAT. § 14-159.12(c) (2013)).

236. Act of July 16, 2012, ch. 190, 2012 N.C. Sess. Laws 897, 899 (codified at N.C. GEN. STAT. § 113-187(e) (2013)).

2013 FELONIES

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2013-52	Enacts new G.S. 14-318.5(b), making it a Class I felony for a parent or person supervising a child knowingly to fail to report the child missing; amends G.S. 14-401.22 (concealment of death) to provide that concealing the death of a child by not reporting the death or by secretly disposing of the body is a Class H felony (such concealment generally is a Class I felony); adds a subsection to G.S. 14-225 (false reports to law enforcement) to make it a Class H felony to provide false information in certain cases involving child victims (the offense generally is a misdemeanor). ²³⁷	3
S.L. 2013-88	G.S. 14-151(d) makes it a misdemeanor to interfere with certain utility lines and meters; this bill adds a recidivist provision making second and subsequent violations Class H felonies; adds an aggravated offense making violations resulting in significant property damage or public endangerment Class F felonies; and adds an aggravated offense making violations resulting in death Class D felonies; the bill also adds two additional ways to violate the statute (reconnecting utilities and interfering with devices). ²³⁸	3

237. Caylee's Law, ch. 52, 2013 N.C. Sess. Laws 130 (codified at N.C. GEN. STAT. §§ 14-318.5(b), -401.22, -225 (2013)).

238. Act of June 6, 2013, ch. 88, 2013 N.C. Sess. Laws 177 (codified as amended at N.C. GEN. STAT. § 14-151(d) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2013-95	Amends G.S. 14-54 by adding new subsection (a1) making it a Class G felony to break or enter a building with intent to terrorize or injure an occupant. ²³⁹	1
S.L. 2013-156	Members of transportation planning boards (Metropolitan Planning Organizations and Rural Transportation Planning Organizations) previously were covered by the State Ethics Act; this bill generally removes them from coverage under the Act (though they still must file Statements of Economic Interest) but imposes certain conflict of interest and disclosure rules on them; it creates misdemeanor penalties for some violations and makes it a Class H felony to provide false information on a Statement of Economic Interest or an additional required disclosure of all real estate owned by the member; there are separate provisions for the two types of boards, so there are two new felonies, one in new G.S. 136-200.2(j), and one in new G.S. 136-211(j). ²⁴⁰	2

239. Act of June 12, 2013, ch. 95, 2013 N.C. Sess. Laws 193 (codified as amended at N.C. GEN. STAT. § 14-54(a1) (2013)).

240. Act of June 19, 2013, ch. 156, 2013 N.C. Sess. Laws 375 (codified at N.C. GEN. STAT. §§ 136-200.2(j), -211(j) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2013-301	Creates a new G.S. 14-118.7, making it a Class H felony to possess an automated sales suppression device, zapper, or phantom-ware. ²⁴¹	1
S.L. 2013-368	This bill repeals several existing prostitution-related offenses and rewrites this area of the law; new felonies include second or subsequent offense of soliciting a prostitute (Class H, G.S. 14-205.1); soliciting a minor for prostitution (Class G, G.S. 14-205.1); soliciting a mentally disabled person for prostitution (Class E, G.S. 14-205.1); second or subsequent offense of patronizing a prostitute (Class G, G.S. 14-205.2); patronizing a minor prostitute (Class F, G.S. 14-205.2); patronizing a mentally disabled prostitute (Class D, G.S. 14-205.2); promoting prostitution (Class F, G.S. 14-205.3); promoting prostitution by a recidivist (Class E, G.S. 14-205.3); promoting prostitution by a minor or a mentally disabled person (Class D, G.S. 14-205.3); confining a minor or a mentally disabled person to promote prostitution (Class C, G.S. 14-205.3); and promoting prostitution by a minor or a mentally disabled person by a recidivist (Class D, G.S. 14-205.3). ²⁴²	11

241. Act of July 18, 2013, ch. 301, 2013 N.C. Sess. Laws 796 (codified at N.C. GEN. STAT. § 14-118.7 (2013)).

242. Act of July 29, 2013, ch. 368, 2013 N.C. Sess. Laws 1386 (codified at N.C. GEN. STAT. §§ 14-205.1 to -205.3 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2013-370	Unlicensed locksmithing was a Class 3 misdemeanor. This bill amends G.S. 74F-3 to make it a Class 1 misdemeanor, and adds a recidivist provision making a subsequent offense a Class I felony. ²⁴³	1
	Total New Felonies Created in 2013:	22

2013 MISDEMEANORS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Created</i>
S.L. 2013-52	Enacts new G.S. 14-318.5, making it a Class 1 misdemeanor if a person who reasonably suspects that a child has disappeared and is in danger fails to report the disappearance; adds new subsection (b) to G.S. 7B-301, making the duty to report child abuse enforceable by Class 1 misdemeanor criminal penalty; and adds new subsection (c) to G.S. 7B-301, making it a Class 1 misdemeanor for a director of social services who receives a report of sexual abuse of a juvenile in a child care facility to fail to inform the SBI. ²⁴⁴	3

243. Act of July 29, 2013, ch. 370, 2013 N.C. Sess. Laws 1416, 1416 (codified at N.C. GEN. STAT. § 74F-3 (2013)).

244. Caylee's Law, ch. 52, 2013 N.C. Sess. Laws 130 (codified at N.C. GEN. STAT. §§ 14-318.5, 7B-301 (2013)).

S.L. 2013-66	Local act makes it a Class 2 misdemeanor in Rockingham County to intentionally shine a light at any wild animal from a road during the nighttime. ²⁴⁵	1
S.L. 2013-156	Members of transportation planning boards (Metropolitan Planning Organizations and Rural Transportation Planning Organizations) previously were covered by the State Ethics Act; this bill generally removes them from coverage under the Act (though they still must file Statements of Economic Interest) but imposes certain conflict of interest and disclosure rules on them; it creates misdemeanor penalties for acting while under a conflict of interest, G.S. 136-200.2(g)(1), (j) (metropolitan boards), G.S. 136-211(f)(1), (j) (rural boards), and for failing to disclose matter required to be included in certain disclosure forms, G.S. 136-200.2(g)(3)–(4), (j) (metropolitan boards), G.S. 136-211(f)(3)–(4), (j) (rural boards). ²⁴⁶	4
S.L. 2013-176	Local act makes it a Class 3 misdemeanor to discharge a firearm or bow from or over a roadway in Beaufort County. ²⁴⁷	1

245. Act of June 5, 2013, ch. 66, 2013 N.C. Sess. Laws 152.

246. Act of June 19, 2013, ch. 156, 2013 N.C. Sess. Laws 375 (codified at N.C. GEN. STAT. §§ 136-200.2(g), -200.2(j), -211(f), -211(j) (2013)).

247. Act of June 20, 2013, ch. 176, 2013 N.C. Sess. Laws 452.

S.L. 2013-368	Repeals several existing prostitution-related offenses and rewrites this area of the law; there is a new misdemeanor offense of patronizing a prostitute (G.S. 14-205.1, Class A1); the bill also re-enacts misdemeanors for prostitution and solicitation of prostitution, but these fairly closely track crimes punishable under prior G.S. 14-204 and so are not counted as new crimes for the purposes of this piece. ²⁴⁸	1
S.L. 2013-369	Section 17.2 of this omnibus gun bill amends the pistol purchase permit statute, G.S. 14-404, to add a new provision allowing the sheriff to revoke a permit under specified circumstances; new G.S. 14-404(h)(5) makes it a misdemeanor to fail to surrender a permit upon request. ²⁴⁹	1
S.L. 2013-380	Adds new G.S. 113-294(c3) (unlawful taking of elk a Class 1 misdemeanor in addition to existing penalties), and new G.S. 113-294(d1) (unlawful taking of deer from certain lands a Class 2 misdemeanor in addition to existing penalties). ²⁵⁰	2
S.L. 2013-406	Creates new G.S. 143-749, making it a Class 2 misdemeanor for certain state employees to make false statements for	1

248. Act of July 29, 2013, ch. 368, § 5, 2013 N.C. Sess. Laws 1386, 1390 (codified at N.C. GEN. STAT. § 14-205.2 (2013)).

249. Act of July 24, 2013, ch. 369, § 17.2(a), 2013 N.C. Sess. Laws 1400, 1409-11 (codified at N.C. GEN. STAT. § 14-404(h) (2013)).

250. Act of July 23, 2013, ch. 380, § 11, 2013 N.C. Sess. Laws 1454, 1458 (codified at N.C. GEN. STAT. § 113-294(c3), (d1) (2013)).

	the purpose of interfering with internal audits and similar reviews. ²⁵¹	
S.L. 2013-407	Completely rewrites the law regarding protection of underground utilities, repealing Article 8 of Chapter 87 and replacing it with new Article 8A; the new article makes it a Class 3 misdemeanor for an excavator to claim falsely that he or she was undertaking an emergency excavation and so was not required to give notice to the underground utility Notification Center. ²⁵²	1
	Total New Misdemeanors Created in 2013:	15

251. Act of August 23, 2013, ch. 406, § 1, 2013 N.C. Sess. Laws 1641, 1643 (codified at N.C. GEN. STAT. § 143-749 (2013)).

252. Underground Utility Safety and Damage Prevention Act, ch. 407, 2013 N.C. Sess. Laws 1644, 1651 (codified at N.C. GEN. STAT. § 87-125(c) (2013)).

APPENDIX II. CRIMES RECLASSIFIED IN NORTH CAROLINA, 2008–2013

2008 RECLASSIFICATIONS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2008-89	Amends G.S. 20-371(a) to upgrade violations of Article 16 of Chapter 20 of the General Statutes (Professional Housemoving) from a Class 3 to a Class 1 misdemeanor. ²⁵³	1 UP
S.L. 2008-117	Upgrades several sex offender crimes by one felony class. A violation of G.S. 14-190.16 (first-degree sexual exploitation of a minor) is upgraded from Class D to Class C; a violation of G.S. 14-190.17 (second-degree sexual exploitation of a minor) is upgraded from Class F to Class E; a violation of G.S. 14-190.17A (third-degree sexual exploitation of a minor) is upgraded from Class I to Class H; a violation of G.S. 14-190.18 (promoting prostitution of a minor) is upgraded from Class D to Class C. ²⁵⁴	4 UP

253. Act of July 11, 2008, ch. 89, § 4, 2008 N.C. Sess. Laws 129, 131 (codified at N.C. GEN. STAT. § 20-371(a) (2013)).

254. Act of July 28, 2008, ch. 117, §§ 3–6, 2008 N.C. Sess. Laws 426, 426–29 (repealed by Act of July 29, 2013, ch. 368, 2013 N.C. Sess. Laws 1386).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2008-191	Upgrades G.S. 14-318.2 (misdemeanor child abuse) from a Class 1 to a Class A1 misdemeanor. ²⁵⁵	1 UP
S.L. 2008-197	Upgrades G.S. 14-12.12(b) (intimidation by cross burning), G.S. 14-12.13 (intimidation by nooses or other exhibits), and G.S. 14-12.14 (intimidation by nooses or other exhibits while masked), from Class I to Class H felonies. Upgrades the enhanced-felony classification of certain misdemeanors committed with ethnic animosity provided for in G.S. 14-3(c) from Class I to Class H felonies. ²⁵⁶	4 UP
S.L. 2008-218	Upgrades the classification of certain existing felony offenses against public morality and decency as follows: <ul style="list-style-type: none"> • G.S. 14-190.16 (first-degree sexual exploitation of a minor), from Class D to Class C; • G.S. 14-190.17 (second-degree sexual exploitation of a minor), from Class F to Class E; and • G.S. 14-190.17A (third-degree sexual exploitation of a minor), from Class I to Class H.²⁵⁷ 	0 ²⁵⁸

255. Act of Aug. 8, 2008, ch. 191, 2008 N.C. Sess. Laws 812, 812 (codified as amended at N.C. GEN. STAT. § 14-318.2 (2013)).

256. Act of Aug. 8, 2008, ch. 197, 2008 N.C. Sess. Laws 842 (codified as amended at N.C. GEN. STAT. §§ 14-3(c), -12.12 to -12.15 (2013)).

257. Act of Aug. 16, 2008, ch. 218, 2008 N.C. Sess. Laws 947, 947-49 (codified as amended at N.C. GEN. STAT. § 14-190.16(d), -190.17(d), -190.17A(d) (2013)).

258. Although this bill upgrades the felony classes, it receives a count of zero because the upgrades to the sexual exploitation of a minor offenses are redundant with the upgrades in S.L. 2008-117, *see supra* note 254 and accompanying text.

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2008-228	Amends G.S. 53-243.14 to downgrade violations of G.S. 53-243.02 (acting as a mortgage broker without a license) from a Class I felony to a Class 3 misdemeanor.	1 DN
	Total Reclassifications in 2008: 10 upgrades, 1 downgrade	

2009 RECLASSIFICATIONS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2009-333	Downgrades G.S. 87-61 (engaging in refrigeration contracting without a license) from a Class 2 to a Class 3 misdemeanor. ²⁵⁹	1 DN
S.L. 2009-528	Upgrades G.S. 20-141.4(b)(5) (misdemeanor death by vehicle) from a Class 1 to a Class A1 misdemeanor. ²⁶⁰	1 UP
	Total Reclassifications in 2009: 1 upgrade, 1 downgrade	

259. Act of July 24, 2009, ch. 333, 2009 N.C. Sess. Laws 557, 558 (codified as amended at N.C. GEN. STAT. § 87-61 (2013)).

260. Act of Aug. 27, 2009, ch. 528, 2009 N.C. Sess. Laws 1424 (codified as amended at N.C. GEN. STAT. § 20-141.4(b)(5) (2013)).

2010 RECLASSIFICATIONS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2010-16	Upgrades G.S. 14-360(a1) (malicious starvation of an animal) from a Class A1 misdemeanor to a Class H felony; upgrades G.S. 14-360(b) (malicious torture and other forms of abuse of an animal) from a Class I to a Class H felony. ²⁶¹	2 UP
S.L. 2010-94	Amends G.S. 15A-266.11 to make it a Class H felony (was a Class 1 misdemeanor) to disclose individually identifiable information from the State DNA Database to a person not authorized to receive it, or to obtain such information from the Database without authorization. ²⁶²	2 UP
S.L. 2010-134	Downgrades G.S. 20-219.2 (removal of unauthorized vehicles from private lots) from a Class 3 misdemeanor to an infraction. ²⁶³	1 DN
	Total Reclassifications in 2010: 4 upgrades, 1 downgrade	

261. Act of June 23, 2010, ch. 16, 2010 N.C. Sess. Laws 16 (codified at N.C. GEN. STAT. § 14-360 (2013)).

262. Act of July 15, 2010, ch. 94, § 10, 2010 N.C. Sess. Laws 356, 363–64 (codified at N.C. GEN. STAT. § 15A-266.11 (2013)).

263. Act of July 21, 2010, ch. 134, 2010 N.C. Sess. Laws 508 (codified as amended at N.C. GEN. STAT. § 20-219.2 (2013)).

2011 RECLASSIFICATIONS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2011-190	Upgrades G.S. 14-226(a) (intimidating or interfering with witnesses) from a Class H to a Class G felony. ²⁶⁴	1 UP
S.L. 2011-268	Upgrades G.S. 14-269.7(a) (possession of a handgun by a minor) from a Class 2 to a Class 1 misdemeanor. Downgrades certain violations of G.S. 14-415.11 (either carrying a concealed handgun without being in possession of a permit when one has been validly issued or by failing to disclose to a law enforcement officer that a person holds a valid permit and is carrying a concealed handgun) subsequent to a first offense from Class 2 misdemeanors to infractions. ²⁶⁵	1 UP 2 DN
S.L. 2011-356	Amends G.S. 14-34.6 to make it a Class I felony (was a Class A1 misdemeanor) to assault Emergency Medical Technicians ("EMTs") or other specified emergency personnel causing physical injury; amends G.S. 14-34.6 to make it a Class H felony (was a Class I) to commit such an assault with a deadly weapon other than a firearm or to cause serious bodily injury;	3 UP

264. Act of June 23, 2011, ch. 190, 2011 N.C. Sess. Laws 753 (codified at N.C. GEN. STAT. § 14-226(a) (2013)).

265. Act of June 17, 2011, ch. 268, 2011 N.C. Sess. Laws 1002, 1006, 1012 (codified as amended at N.C. GEN. STAT. §§ 14-269.7(a), -415.21 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
	amends G.S. 14-288.9 to make it a Class I felony (was a Class 1 misdemeanor) to assault emergency personnel causing physical injury. ²⁶⁶	
	Total Reclassifications in 2011: 5 upgrades, 2 downgrades	

2012 RECLASSIFICATIONS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2012-150	Amends G.S. 14-118.1 (simulation of court process in connection with collection of claim, demand, or account) to make it a Class I felony (formerly a Class 2 misdemeanor); amends G.S. 14-401.19 (filing false security agreements) to make it a Class I felony (formerly a Class 2 misdemeanor); amends G.S. 44A-12.1(c) (filing a claim of lien on real property knowing it is not authorized by statute or with an improper purpose) to make it a Class I felony (formerly a Class 1 misdemeanor). ²⁶⁷	3 UP
S.L. 2012-165	Amends G.S. 14-17 to upgrade second-degree murder from a Class B2 to a Class B1 felony except in specified	2 UP

266. Act of June 27, 2011, ch. 356, 2011 N.C. Sess. Laws 1495 (codified at N.C. GEN. STAT. §§ 14-34.6, -288.9 (2013)).

267. Act of July 3, 2012, ch. 150, 2012 N.C. Sess. Laws 719 (codified as amended at N.C. GEN. STAT. §§ 14-118.1, -401.19, 44A-12.1(c) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
	circumstances when it remains a Class B2 felony. Amends G.S. 20-141.4(b)(2) to upgrade felony death by vehicle from a Class E to a Class D felony. ²⁶⁸	
	Total Reclassifications in 2012: 5 upgrades, 0 downgrades	

2013 RECLASSIFICATIONS

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2013-6	Under G.S. 14-228.4 (c) (disorderly conduct), violations of subsection (a)(8) (concerning funerals) were formerly punished as a Class 2 misdemeanor (first offense), Class 1 misdemeanor (second), or Class I felony (third); this bill bumps those to Class 1, Class I, and Class H, respectively; the bill also expands the time and distance limits in the statute. ²⁶⁹	3 UP

268. Act of July 12, 2012, ch. 165, 2012 N.C. Sess. Laws 781 (codified at N.C. GEN. STAT. §§ 14-17, 20-141.4(b)(2) (2013)).

269. Act of March 6, 2013, ch. 6, 2013 N.C. Sess. Laws 42 (codified at N.C. GEN. STAT. § 14-288.4(c) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2013-35	Upgrades five separate offenses contained in distinct subsections of G.S. 14-318.4 (felony child abuse) by one class each. ²⁷⁰	5 UP
S.L. 2013-88	Upgrades violations of G.S. 14-151 (interfering with gas, electric, and steam appliances or meters) from Class 2 to Class 1 misdemeanors. ²⁷¹	1 UP
S.L. 2013-90	Upgrades an intentional violation of G.S. 90-108(a)(14) (embezzlement, diversion, or misapplication of controlled substances by an employee who is authorized to access or who has access to controlled substances) from a Class I to a Class G felony. ²⁷²	1 UP
S.L. 2013-124	Amends GS 15A-1340.16D to provide for an enhanced sentence (an increase of twenty-four to forty-eight months added to the minimum term to which the offender is sentenced, depending on the circumstance) if a person is convicted of manufacturing methamphetamine under G.S. 90-95(b)(1a) and children, the	1 UP ²⁷⁴

270. Act of April 24, 2013, ch. 35, 2013 N.C. Sess. Laws 95 (codified as amended at N.C. GEN. STAT. § 14.318.4 (2013)).

271. Act of June 6, 2013, ch. 88, 2013 N.C. Sess. Laws 177 (codified at N.C. GEN. STAT. § 14-151 (2013)).

272. Act of June 12, 2013, ch. 90, 2013 N.C. Sess. Laws 179 (codified at N.C. GEN. STAT. § 90-108(b)(2) (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
	disabled, or the elderly are present at the manufacturing location. ²⁷³	
S.L. 2013-286	Upgrades G.S. 14-111.4 (misuse of the 911 system) from a Class 3 to a Class 1 misdemeanor. ²⁷⁵	1 UP
S.L. 2013-323	Upgrades four distinct violations of G.S. 14-72.7 (chop shop activity) from Class H to Class G felonies. Amends G.S. 20-62.1 to make certain recordkeeping and reporting violations concerning salvage yards and metals recyclers Class I felonies rather than Class 1 misdemeanors. ²⁷⁶	5 UP

274. Technically, this is not a reclassification of the crime, but provides for a significant increase in the severity of punishment.

273. Act of June 19, 2013, ch. 124, 2013 N.C. Sess. Laws 284 (codified at N.C. GEN. STAT. § 15A-1340.16D (2013)).

275. Act of July 10, 2013, ch. 286, § 1, 2013 N.C. Sess. Laws 758, 758 (codified at N.C. GEN. STAT. § 14-111.4 (2013)).

276. Act of July 23, 2013, ch. 323, 2013 N.C. Sess. Laws 875 (codified as amended at N.C. GEN. STAT. §§ 14-72.7, 20-62.1 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2013-360	<p>Downgrades the following Class 1 or Class 2 misdemeanors to Class 3 misdemeanors:</p> <ul style="list-style-type: none"> • G.S. 14-106 (obtaining property by worthless check); • G.S. 14-107 (worthless checks); • G.S. 14-167 (failure to return rental property); • G.S. 14-168.1 (conversion by bailee); • G.S. 14-168.4 (failure to return rental property with purchase option); • G.S. 20-28(a) (driving while license revoked, except when revoked for DWI); • G.S. 20-7 (no operators license due to failure to obtain, failure to carry, expiration, or failure to comply with restrictions); • G.S. 20-7.1 (failure to notify DMV of an address change regarding a license in a timely manner); • G.S. 20-34 (allowing an unlicensed person to use a motor vehicle); • G.S. 20-57(c) (failure to carry or to sign a registration card); • G.S. 20-67 (failure to notify DMV of an address change regarding a registration in a timely manner); • G.S. 20-111(1) (driving unregistered vehicle); • G.S. 20-111(2) (fictitious/expired registration, plate, etc.); • G.S. 20-127(d) (window tinting violation); • G.S. 20-141(j1) (misdemeanor speeding); and 	21 DN

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
	<ul style="list-style-type: none"> • G.S. 20-313(a) (no insurance). <p>Downgrades the following Class 3 misdemeanors to infractions:</p> <ul style="list-style-type: none"> • G.S. 75A-6.1 (boating navigation rules violations); • G.S. 75A-13.1 (skin and scuba diving flag violations); • G.S. 75A-13.3(c3) (vessel livery without providing basic safety instruction); • G.S. 75A-17(f) (no wake speed when passing law enforcement boat); and • G.S. 75A-18(a) (residual penalty provision for boating safety violations).²⁷⁷ 	
S.L. 2013-368	Upgrades a violation of G.S. 14-43.13 (sexual servitude) from a Class F to a Class D felony if the victim is an adult. ²⁷⁸	1 UP
S.L. 2013-370	Unlicensed locksmithing was a Class 3 misdemeanor; this bill amends G.S. 74F-3 to make it a Class 1 misdemeanor. ²⁷⁹	1 UP

277. Act of July 26, 2013, ch. 360, 2013 N.C. Sess. Laws 965, 1260–64 (codified as amended in scattered sections of N.C. GEN. STAT.).

278. Act of July 29, 2013, ch. 368, 2013 N.C. Sess. Laws 1386, 1387 (codified as amended at N.C. GEN. STAT. § 14-43.13 (2013)).

279. Act of July 29, 2013, ch. 370, 2013 N.C. Sess. Laws 1416, 1416 (codified at N.C. GEN. STAT. § 74F-3 (2013)).

<i>Session Law</i>	<i>Effect</i>	<i>Offenses Reclassified</i>
S.L. 2013-380	Downgrades G.S. 75A-13.1 (skin and scuba diving flag violations) from a Class 3 misdemeanor to an infraction. Downgrades violations of G.S. 75A-13.3(c) (vessel livery shall provide basic safety instruction to operators of leased watercraft) from a Class 3 misdemeanor to an infraction. ²⁸⁰	0 ²⁸¹
	Total Reclassifications, 2013: 19 upgrades, 21 downgrades	

280. Act of July 23, 2013, ch. 380, 2013 N.C. Sess. Laws 1454, 1456 (codified as amended at N.C. GEN. STAT. §§ 75A-13.1(d), -13.3(c3) (2013)).

281. This is counted as zero upgrades because the changes are redundant with those in S.L. 2013-360. *See supra* note 277 and accompanying text.

APPENDIX III. FREQUENCY WITH WHICH CRIMES CREATED IN 2009
AND 2010 WERE CHARGED IN 2012

N.C. GEN. STAT.	Crime Name	Class	Notes	2012 Charging Frequency
§ 14-226.3	Interference with electronic monitoring devices	Depends on underlying crime		61
§ 20-217(a), (g)	Passing a stopped school bus resulting in death	Class H	Not counting Class I nonfatal violations	1
§ 14-72.8	Felony larceny of motor vehicle parts	Class I		349
§ 14-160.2(a)	Alteration, destruction, or removal of serial number from firearm	Class H		86
§ 14-160.2(b)	Possession of firearm with serial number removed	Class H		204
§ 20-27.1	Unlawful for sex offender to drive commercial passenger vehicle or school bus without appropriate commercial license or while disqualified	Class F		0
§ 20-37.14A	False statement by sex offender to obtain commercial license	Class I		0
§ 15A-268(i)(1)	Knowing destruction or alteration of biological evidence/noncapital crime	Class I		0
§ 15A-268(i)(2)	Knowing destruction or alteration of biological	Class H		0

	evidence/first-degree murder			
§ 108A-63(e)	Defrauding Medical Assistance Program by medical provider	Class H		1
§ 14-135	Felonious cutting, injuring, or removing another's timber	Class H		0
§ 14-226.3	Interference with electronic monitoring devices	Depends on underlying crime		76
§ 14-458.1	Cyberbullying by defendant 18 years old or over	Class 1		14
§ 14-458.1	Cyberbullying by defendant under 18 years old	Class 2		22
§ 14-422(b)	Violation of reptile laws resulting in death of another	Class A1		0
§ 14-422(c)	Releasing non-native venomous reptiles, large constricting snakes, or crocodiles into the wild	Class A1		0
§ 14-258.1(b)	Furnishing alcoholic beverage to inmates	Class 1		0
§ 14-258.1(c)	Furnishing tobacco products to inmates	Class 1		74
§ 14-258.1(d)	Furnishing mobile phone to inmates	Class 1		8
§ 20-137.4A	Texting while driving a school bus	Class 2	Not counting infractions for texting while	18

			driving other vehicles, which are defined in the same subsection	
§ 14-277.4A	Targeted picketing of a residence	Class 2		0
§ 90-113.82 to -83(a)	Glass tube or splitter violation by a retailer	Class 2		0
§ 90-113.82 to -83(b)	False statement to obtain glass tube or splitter	Class 1		0
§ 14-86.2	Larceny, destruction, defacement, or vandalism of portable toilets or pumper trucks	Class 1		0
§ 15A-1340.50	Violation of no-contact order prohibiting future contact by convicted sex offender with crime victim	Class A1		1
§ 14-401.23	Third or subsequent salvia divinorum offense	Class 3		0
§ 77-128	Failure by vessel owner and operator to keep log of marine sanitation device pumpouts	Class 3		0
§ 77-129	Discharging treated or untreated sewage in coastal waters	Class 1		0
§ 75A-13.3(c3)	Leasing personal watercraft without safety information	Class 3	Reduced to an infraction in 2013 session	Unable to determine because all 84 violations of G.S. 75A-13.3 are

				lumped together
§ 20-183.8(b1)	Performing a vehicle safety or emissions inspection without a license	Class 3		57
§ 90-677.3	Performing polysomnography without a license	Class 1		0
§ 131D-2.6	Operating an adult-care facility without a license	Class 3		0
§ 131D-2.5(b)	Operating an unregistered "multiunit assisted housing with services program"	Class 3		0
§ 53-244.112	Engaging in mortgage lending without a license	Class 3		0
§ 105-330.3(d)	Evading motor vehicle tax	Class 2		0
§ 50B-4.1(g1)	Entry into domestic violence safe house in violation of protective order	Class H		1
§ 14-306.4	Second electronic sweepstakes offense	Class H		0
§ 14-306.4	Third or subsequent electronic sweepstakes offense	Class G		0
§163-278.27(a2), § 163-278.14(a)	Anonymous/false name campaign contribution of greater than \$10,000	Class I		0
§ 163-278.27(a2), § 163-278.19(a)	Unlawful campaign contribution by labor union, corporation, etc., of greater than \$10,000	Class I		0

§ 20-79.2(b2)(4)	Selling or renting transporter plate to another	Class I		0
§ 93E-2-10	Violation of real estate appraisal management company laws	Class 1		0
§ 130A-309.10(m), § 130A-25(d)	Disposal of fluorescent lights and thermostats in unlined landfills	Class 3		Unable to determine because all 33 public health law violations punishable under G.S. 130A-25 are lumped together
§ 14-306.4	Operation of electronic sweepstakes	Class 1		4
§ 126-14(a1)	Promise or threat by state employee to obtain political contribution or support	Class 2		0
§ 14-415.4(l)	False statement regarding restoration of firearms rights	Class 1		0