

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

S

3

SENATE BILL 3*

Select Committee on Corrections/Punishment Committee Substitute Adopted 2/24/94
Third Edition Engrossed 2/28/94

Short Title: Mandatory Life/First Degree Rape.

(Public)

Sponsors:

Referred to: Appropriations.

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PUNISHMENT UNDER STRUCTURED SENTENCING FOR FIRST DEGREE RAPE AND FIRST DEGREE SEXUAL OFFENSE, INCLUDING LIFE WITHOUT PAROLE FOR PRIOR RECORD LEVELS IV, V, AND VI.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-27.2(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class ~~B~~B1 felony."

Sec. 2. G.S. 14-27.4(b) reads as rewritten:

"(b) Any person who commits an offense defined in this section is guilty of a Class ~~B~~B1 felony."

Sec. 3. G.S. 14-17, as amended by Section 1127 of Chapter 539 of the 1993 Session Laws, reads as rewritten:

"§ 14-17. Murder in the first and second degree defined; punishment.

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court

1 shall determine pursuant to G.S. 15A-2000, except that any such person who was under
2 17 years of age at the time of the murder shall be punished with imprisonment in the
3 State's prison for life. Provided, however, any person under the age of 17 who commits
4 murder in the first degree while serving a prison sentence imposed for a prior murder or
5 while on escape from a prison sentence imposed for a prior murder shall be punished
6 with death or imprisonment in the State's prison for life as the court shall determine
7 pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be
8 proximately caused by the unlawful distribution of opium or any synthetic or natural
9 salt, compound, derivative, or preparation of opium, or cocaine or other substance
10 described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of
11 the user, shall be deemed murder in the second degree, and any person who commits
12 such murder shall be punished as a Class ~~B~~B2 felon.

13 Sec. 4. G.S. 14-20, as amended by Section 1139 of Chapter 539 of the 1993
14 Session Laws, read as rewritten:

15 **"§ 14-20. Killing adversary in duel; aiders and abettors declared accessories.**

16 If any person fight a duel in consequence of a challenge sent or received, and either
17 of the parties shall be killed, then the survivor, on conviction thereof, shall be punished
18 as a Class ~~B~~B2 felon. All their aiders and abettors shall be considered accessories
19 before the fact.

20 Any person charged with killing an adversary in a duel may enter a plea of guilty to
21 said charge in the same way and manner and under the conditions and restrictions set
22 forth in G.S. 15-162.1 relating to pleas of guilty for first degree murder, first degree
23 burglary, arson and rape."

24 Sec. 5. G.S. 14-5.2 reads as rewritten:

25 **"§ 14-5.2. Accessory before fact punishable as principal felon.**

26 All distinctions between accessories before the fact and principals to the commission
27 of a felony are abolished. Every person who heretofore would have been guilty as an
28 accessory before the fact to any felony shall be guilty and punishable as a principal to
29 that felony. However, if a person who heretofore would have been guilty and punishable
30 as an accessory before the fact is convicted of a capital felony, and the jury finds that his
31 conviction was based solely on the uncorroborated testimony of one or more principals,
32 coconspirators, or accessories to the crime, he shall be guilty of a Class ~~B~~B2 felony."

33 Sec. 6. G.S. 15A-1371(a1), as amended by Section 22 of Chapter 538 of the
34 1993 Session Laws, reads as rewritten:

35 "(a1) A prisoner serving a term of life imprisonment for a Class A felony is eligible
36 for parole after serving 25 years. A prisoner serving a term of life imprisonment for
37 first degree rape or first degree sexual offense shall be imprisoned for the remainder of
38 the prisoner's natural life. This subsection applies to offenses committed on and after
39 January 1, 1995."

40 Sec. 7. G.S. 15A-1340.17, as enacted by Section 1 of Chapter 538 of the
41 1993 Session Laws, reads as rewritten:

42 **"§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

1 (a) Offense Classification; Default Classifications. – The offense classification is
 2 as specified in the offense for which the sentence is being imposed. If the offense is a
 3 felony for which there is no classification, it is a Class I felony.

4 (b) Fines. – Any judgment that includes a sentence of imprisonment may also
 5 include a fine. If a community punishment is authorized, the judgment may consist of a
 6 fine only. Additionally, when the defendant is other than an individual, the judgment
 7 may consist of a fine only. Unless otherwise provided, the amount of the fine is in the
 8 discretion of the court.

9 (c) Punishments for Each Class of Offense and Prior Record Level; Punishment
 10 Chart Described. – The authorized punishment for each class of offense and prior record
 11 level is as specified in the chart below. Prior record levels are indicated by the Roman
 12 numerals placed horizontally on the top of the chart. Classes of offense are indicated by
 13 the letters placed vertically on the left side of the chart. Each cell on the chart contains
 14 the following components:

- 15 (1) A sentence disposition or dispositions: 'C' indicates that a community
 16 punishment is authorized; 'I' indicates that an intermediate punishment
 17 is authorized; ~~and 'A' indicates that an active punishment is authorized.~~
 18 authorized; and 'Life Imprisonment Without Parole' indicates that the
 19 defendant shall be imprisoned for the remainder of the prisoner's
 20 natural life.
- 21 (2) A presumptive range of minimum durations, if the sentence of
 22 imprisonment is neither aggravated or mitigated; any minimum term of
 23 imprisonment in that range is permitted unless the court finds pursuant
 24 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is
 25 appropriate. The presumptive range is the middle of the three ranges
 26 in the cell.
- 27 (3) A mitigated range of minimum durations if the court finds pursuant to
 28 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is
 29 justified; in such a case, any minimum term of imprisonment in the
 30 mitigated range is permitted. The mitigated range is the lower of the
 31 three ranges in the cell.
- 32 (4) An aggravated range of minimum durations if the court finds pursuant
 33 to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is
 34 justified; in such a case, any minimum term of imprisonment in the
 35 aggravated range is permitted. The aggravated range is the higher of
 36 the three ranges in the cell.

37
 38 **PRIOR RECORD LEVEL**

39

	I	II	III	IV	V	VI	
40							
41	0 Pts	1-4 Pts	5-8 Pts		9-14 Pts	15-18 Pts	19+ Pts
42							

43 A Life Imprisonment or Death as Established by Statute

1		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
2		<u>360-600</u>	<u>420-660</u>		<u>480-720</u>		<u>Life</u>	<u>Imprisonment</u>	<u>Without Parole</u>
3		<u>Aggravated</u>							
4	<u>B1</u>	<u>240-300</u>	<u>288-360</u>	<u>336-448</u>	<u>384-512</u>	<u>432-516</u>	<u>480-600</u>	<u>PRESUMPTIVE</u>	
5		<u>135-180</u>	<u>162-216</u>	<u>189-252</u>	<u>216-288</u>	<u>243-324</u>	<u>290-360</u>		
6		<u>Mitigated</u>							
7									
8									
9		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
10		<u>135-169</u>	<u>163-204</u>	<u>190-238</u>	<u>216-270</u>	<u>243-304</u>	<u>270-338</u>		
11		<u>Aggravated</u>							
12	<u>BB2</u>	<u>108-135</u>	<u>130-163</u>	<u>152-190</u>	<u>173-216</u>	<u>194-243</u>	<u>216-270</u>	<u>PRESUMPTIVE</u>	
13		<u>81-108</u>	<u>98-130</u>	<u>114-152</u>	<u>130-173</u>	<u>146-194</u>	<u>162-216</u>		
14		<u>Mitigated</u>							
15									
16		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
17		<u>63-79</u>	<u>86-108</u>	<u>100-125</u>	<u>115-144</u>	<u>130-162</u>	<u>145-181</u>	<u>Aggravated</u>	
18	<u>C</u>	<u>50-63</u>	<u>69-86</u>	<u>80-100</u>	<u>92-115</u>	<u>104-130</u>	<u>116-145</u>	<u>PRESUMPTIVE</u>	
19		<u>38-50</u>	<u>52-69</u>	<u>60-80</u>	<u>69-92</u>	<u>78-104</u>	<u>87-116</u>	<u>Mitigated</u>	
20									
21		<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
22		<u>55-69</u>	<u>66-82</u>	<u>89-111</u>	<u>101-126</u>	<u>115-144</u>	<u>126-158</u>	<u>Aggravated</u>	
23	<u>D</u>	<u>44-55</u>	<u>53-66</u>	<u>71-89</u>	<u>81-101</u>	<u>92-115</u>	<u>101-126</u>	<u>PRESUMPTIVE</u>	
24		<u>33-44</u>	<u>40-53</u>	<u>53-71</u>	<u>61-81</u>	<u>69-92</u>	<u>76-101</u>	<u>Mitigated</u>	
25									
26		<u>I/A</u>	<u>I/AA</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
27		<u>25-31</u>	<u>29-36</u>	<u>34-42</u>	<u>46-58</u>	<u>53-66</u>	<u>59-74</u>	<u>Aggravated</u>	
28	<u>E</u>	<u>20-25</u>	<u>23-29</u>	<u>27-34</u>	<u>37-46</u>	<u>42-53</u>	<u>47-59</u>	<u>PRESUMPTIVE</u>	
29		<u>15-20</u>	<u>17-23</u>	<u>20-27</u>	<u>28-37</u>	<u>32-42</u>	<u>35-47</u>	<u>Mitigated</u>	
30									
31		<u>I/A</u>	<u>I/AI/A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
32		<u>16-20</u>	<u>19-24</u>	<u>21-26</u>	<u>25-31</u>	<u>34-42</u>	<u>39-49</u>	<u>Aggravated</u>	
33	<u>F</u>	<u>13-16</u>	<u>15-19</u>	<u>17-21</u>	<u>20-25</u>	<u>27-34</u>	<u>31-39</u>	<u>PRESUMPTIVE</u>	
34		<u>10-13</u>	<u>11-15</u>	<u>13-17</u>	<u>15-20</u>	<u>20-27</u>	<u>23-31</u>	<u>Mitigated</u>	
35									
36		<u>I/A</u>	<u>I/AI/A</u>	<u>I/A</u>	<u>A</u>	<u>A</u>	<u>A</u>	<u>DISPOSITION</u>	
37		<u>13-16</u>	<u>15-19</u>	<u>16-20</u>	<u>20-25</u>	<u>21-26</u>	<u>29-36</u>	<u>Aggravated</u>	
38	<u>G</u>	<u>10-13</u>	<u>12-15</u>	<u>13-16</u>	<u>16-20</u>	<u>17-21</u>	<u>23-29</u>	<u>PRESUMPTIVE</u>	
39		<u>8-10</u>	<u>9-12</u>	<u>10-13</u>	<u>12-16</u>	<u>13-17</u>	<u>17-23</u>	<u>Mitigated</u>	
40									
41		<u>C/I</u>	<u>I</u>	<u>I/A</u>	<u>I/A</u>	<u>I/A</u>	<u>A</u>	<u>DISPOSITION</u>	
42		<u>6-8</u>	<u>8-10</u>	<u>10-12</u>	<u>11-14</u>	<u>15-19</u>	<u>20-25</u>	<u>Aggravated</u>	
43	<u>H</u>	<u>5-6</u>	<u>6-8</u>	<u>8-10</u>	<u>9-11</u>	<u>12-15</u>	<u>16-20</u>	<u>PRESUMPTIVE</u>	
44		<u>4-5</u>	<u>4-6</u>	<u>6-8</u>	<u>7-9</u>	<u>9-12</u>	<u>12-16</u>	<u>Mitigated</u>	

	C	C/II	I/A	I/A	I/A	DISPOSITION		
6-8	6-86-8	8-10	9-11	10-12	Aggravated			
I 4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE		
3-4	3-44-5	4-6	5-7	6-8	Mitigated			

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

4-5	5-6	6-8	7-9	8-10	9-11	10-12	11-14
12-15	13-16	14-17	15-18	16-20	17-21	18-22	19-23
20-24	21-26	22-27	23-28	24-29	25-30	26-32	27-33
28-34	29-35	30-36	31-38	32-39	33-40	34-41	35-42
36-44	37-45	38-46	39-47	40-48	41-50	42-51	43-52
44-53	45-54	46-56	47-57	48-58	49-59		

(e) Maximum Sentences Specified for Class ~~B~~B1 through Class E Felonies. Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class ~~B~~B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180

1	143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
2	151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
3	159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
4	167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
5	175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
6	183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
7	191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
8	199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
9	207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
10	215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
11	223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
12	231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
13	239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
14	247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
15	255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
16	263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
17	271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
18	279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
19	287-354	288-355	289-356	290-357	291-359	292-360	293-361	295-362
20	295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
21	303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
22	311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
23	319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
24	327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
25	335-411	336-413	337-414	338-415	339-416			

26

27 (e1) Maximum Sentences Specified for Class B1 through Class E Felonies for
 28 Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute
 29 establishing a punishment for a specific crime, when the minimum sentence is 340
 30 months or more, the corresponding maximum term of imprisonment shall be equal to
 31 the sum of the minimum term of imprisonment and twenty percent (20%) of the
 32 minimum term of imprisonment, rounded to the next highest month, plus nine additional
 33 months."

34 Sec. 8. G.S. 15A-1368.1, as enacted by Section 20.1 of Chapter 538 of the
 35 1993 Session Laws, reads as rewritten:

36 "**§ 15A-1368.1. Applicability of Article 84A.**

37 This Article applies to all felons in Class ~~B~~B1 through Class E sentenced to an
 38 active punishment as defined in G.S. ~~15A-1340.11~~15A-1340.11, but does not apply to
 39 felons in Class B1 sentenced to life imprisonment without parole. Prisoners subject to
 40 Articles 85 and 85A are excluded from this Article's coverage."

41 Sec. 9. G.S. 15A-1340.13(h), as enacted by Section 1 of Chapter 538 of the
 42 1993 Session Laws, reads as rewritten:

43 "(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court
 44 shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

- 1 (1) The offense is a Class A or Class B1 offense;
 2 (2) The offense is a drug trafficking offense under G.S. 90-95(h); or
 3 (3) The defendant has five or more points as determined by G.S.
 4 15A-1340.14."

5 Sec. 10. G.S. 15A-1340.14(b), as enacted by Section 1 of Chapter 538 of the
 6 1993 Session Laws, reads as rewritten:

7 "(b) Points. – Points are assigned as follows:

- 8 (1) For each prior felony Class A conviction, 10 points.
 9 (1a) For each prior felony Class B1 conviction, 9 points.
 10 (2) For each prior felony Class ~~B~~, B2, C, or D conviction, 6 points.
 11 (3) For each prior felony Class E, F, or G conviction, 4 points.
 12 (4) For each prior felony Class H or I conviction, 2 points.
 13 (5) For each prior Class 1 misdemeanor conviction, 1 point, ~~point~~,
 14 provided that convictions for Class 1 misdemeanor offenses under
 15 Chapter 20 of the General Statutes, other than conviction for
 16 misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be
 17 assigned any points for purposes of determining a person's prior
 18 record for felony sentencing.
 19 (6) If all the elements of the present offense are included in the prior
 20 offense, 1 point.
 21 (7) If the offense was committed while the offender was on probation
 22 or parole, or while the offender was serving a sentence of
 23 imprisonment, or while the offender was on escape from a
 24 correctional institution while serving a sentence of imprisonment,
 25 1 point."

26 Sec. 11. G.S. 15A-1372(a), as amended by Section 23 of Chapter 538 of the
 27 1993 Session Laws, reads as rewritten:

28 "(a) Term of Parole. – The term of parole for any person released from
 29 imprisonment may be no greater than:

- 30 (1) One year for a conviction for impaired driving under G.S. 20-
 31 138.1; or
 32 (2) Three years for a sentence of life ~~imprisonment~~, imprisonment for
 33 which parole is allowed."

34 Sec. 12. G.S. 143B-266(a), as amended by Section 42 of Chapter 538 of the
 35 1993 Session Laws, reads as rewritten:

36 "(a) There is hereby created a Post-Release Supervision and Parole Commission
 37 of the Department of Correction with the authority to grant paroles, including both
 38 regular and temporary paroles, to persons held by virtue of any final order or judgment
 39 of any court of this State as provided in Chapter 148 of the General Statutes and laws of
 40 the State of North Carolina, except that for persons sentenced under Article 81B of
 41 Chapter 15A of the General Statutes, only those sentenced to life imprisonment for first
 42 degree murder are eligible for parole. The Commission shall also have authority to
 43 revoke, terminate, and suspend paroles of such persons (including persons placed on
 44 parole on or before the effective date of the Executive Organization Act of 1973) and to

1 assist the Governor in exercising his authority in granting reprieves, commutations, and
2 pardons, and shall perform such other services as may be required by the Governor in
3 exercising his powers of executive clemency. The Commission shall also have
4 authority to revoke and terminate persons on post-release supervision, as provided in
5 Article 84A of Chapter 15A of the General Statutes."

6 Sec. 13. G.S. 14-2.5, as enacted by Section 6 of Chapter 538 of the 1993
7 Session Laws, reads as rewritten:

8 **"§ 14-2.5. Punishment for attempt to commit a felony or misdemeanor.**

9 Unless a different classification is expressly stated, an attempt to commit a
10 misdemeanor or a felony is punishable under the next lower classification as the offense
11 which the offender attempted to commit. An attempt to commit a Class A or Class B1
12 felony is a Class B2 felony, an attempt to commit a Class I felony is a Class 1
13 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3
14 misdemeanor."

15 Sec. 14. G.S. 14-2.4(a), as amended by Section 5 of Chapter 538 of the 1993
16 Session Laws, reads as rewritten:

17 "(a) Unless a different classification is expressly stated, a person who is convicted
18 of a conspiracy to commit a felony is guilty of a felony that is one class lower than the
19 felony he or she conspired to commit, except that a conspiracy to commit a Class A or
20 Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a
21 Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor."

22 Sec. 15. G.S. 14-2.6(a), as enacted by Section 6.1 of Chapter 538 of the 1993
23 Session Laws, reads as rewritten:

24 "(a) Unless a different classification is expressly stated, a person who solicits
25 another person to commit a felony is guilty of a felony that is two classes lower than the
26 felony the person solicited the other person to commit, except that a solicitation to
27 commit a Class A or Class B1 felony is a Class C felony, a solicitation to commit a
28 Class B2 felony is a Class D felony, a solicitation to commit a Class H felony is a Class
29 1 misdemeanor, and a solicitation to commit a Class I felony is a Class 2 misdemeanor."

30 Sec. 16. This act becomes effective January 1, 1995, and applies to offenses
31 committed on or after that date.