

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 157

Short Title: Criminal Tech./Clarifying Amend.

(Public)

Sponsors: Representatives Michaux, Barnes, and Redwine.

Referred to: Judiciary II.

February 9, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING AMENDMENTS AS RECOMMENDED BY THE SENTENCING COMMISSION.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL AMENDMENTS.

Section 1. G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. – For a first conviction under subsections (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant ~~may~~shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant ~~may~~shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant ~~may~~shall be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least ~~14~~11 days. However, if the sentencing judge finds that the

1 defendant is unable, by reason of mental or physical infirmity, to perform the service
2 required under this section, and the reasons for such findings are set forth in the
3 judgment, ~~he~~ the judge may pronounce such other sentence as ~~he~~ the judge finds
4 appropriate."

5 Sec. 2. G.S. 15A-1021(a) reads as rewritten:

6 "(a) In superior court, the prosecution and the defense may discuss the possibility
7 that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses,
8 the prosecutor will not charge, will dismiss, or will move for the dismissal of other
9 charges, or will recommend or not oppose a particular ~~sentence, including a prison term~~
10 ~~different from the presumptive prison term applicable to the defendant, if convicted,~~
11 ~~under G.S. 15A-1340.4(f).~~ sentence. If the defendant is represented by counsel in the
12 discussions the defendant need not be present. The trial judge may participate in the
13 discussions."

14 Sec. 3. G.S. 15A-1340.17(c) reads as rewritten:

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

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

42 43 **PRIOR RECORD LEVEL**

	I	II	III	IV	V	VI		
	0 Pts	1-4 Pts	5-8 Pts		9-14 Pts	15-18 Pts	19+ Pts	
5	A Life Imprisonment <u>Without Parole</u> or Death as Established by Statute							
7	A	A	A	A	A	A	DISPOSITION	
8	240-300	288-360		336-420		384-480	Life Imprisonment	Aggravated
9							Without Parole	
10	B1 192-240	230-288		269-336	307-384	346-433	384-480	PRESUMPTIVE
11	144-192	173-230		202-269	230-307	260-346	288-384	
12		Mitigated						
15	A	A	A	A	A	A	DISPOSITION	
16	135-169	163-204		190-238		216-270	243-304	270-338
17		Aggravated						
18	B2 108-135	130-163		152-190	173-216	194-243	216-270	PRESUMPTIVE
19	81-108	98-130		114-152	130-173	146-194	162-216	
20		Mitigated						
22	A	A	A	A	A	A	DISPOSITION	
23	63-79	86-108	100-125		115-144	130-162	145-181	Aggravated
24	C 50-63	69-86		80-100	92-115	104-130	116-145	PRESUMPTIVE
25	38-50	52-69	60-80	69-92	78-104	87-116	Mitigated	
27	A	A	A	A	A	A	DISPOSITION	
28	55-69	66-82	89-111		101-126	115-144	126-158	Aggravated
29	D 44-55	53-66		71-89	81-101	92-115	101-126	PRESUMPTIVE
30	33-44	40-53	53-71	61-81	69-92	76-101	Mitigated	
32	I/A	I/AA		A	A	A	DISPOSITION	
33	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated	
34	E 20-25	23-29		27-34	37-46	42-53	47-59	PRESUMPTIVE
35	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated	
37	I/A	I/AI/A		A	A	A	DISPOSITION	
38	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated	
39	F 13-16	15-19		17-21	20-25	27-34	31-39	PRESUMPTIVE
40	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated	
42	I/A	I/AI/A		I/A	A	A	DISPOSITION	
43	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated	

1	G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
2		8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
3								
4		C/I	I	I/A	I/A	I/A	A	DISPOSITION
5		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
6	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
7		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
8								
9		C	C/II	I/A	I/A	I/A		DISPOSITION
10		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
11	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
12		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated " Sec. 4. G.S. 15A-1444(e)reads
13								as rewritten:

14 "(e) Except as provided in ~~subsection (a1)~~ subsections (a1) and (a2) of this section
 15 and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest
 16 has been denied, the defendant is not entitled to appellate review as a matter of right
 17 when he has entered a plea of guilty or no contest to a criminal charge in the superior
 18 court, but he may petition the appellate division for review by writ of certiorari. If an
 19 indigent defendant petitions the appellate division for a writ of certiorari, the presiding
 20 superior court judge may in his discretion order the preparation of the record and
 21 transcript of the proceedings at the expense of the State."

22 Sec. 5. G.S. 20-166.1(k) reads as rewritten:

23 "(k) ~~A~~ Except as provided in subsection (c) of this section, a violation of any
 24 provision of this section is a Class 2 misdemeanor."

25 Sec. 6. G.S. 113-136(j) read as rewritten:

26 "(j) The refusal of any person to stop in obedience to the directions of an inspector
 27 or protector acting under the authority of this section is unlawful. A violation of this
 28 subsection is ~~punishable by a fine of not less than fifty dollars (\$50.00) nor more than~~
 29 ~~two hundred dollars (\$200.00), imprisonment not to exceed 30 days, or both.~~ a Class 3
 30 misdemeanor."

31 PART II. CLARIFYING AMENDMENTS.

32 Sec. 7. G.S. 15A-1340.11(2) reads as rewritten:

33 "(2) Community punishment. – A sentence in a criminal case that does not
 34 include an active ~~punishment or punishment,~~ an intermediate
 35 ~~punishment.~~ punishment, or any of the conditions of probation listed in
 36 subdivision (6) of this section."

37 Sec. 8. G.S. 15A-1340.14(b) reads as rewritten:

- 38 "(b) Points. – Points are assigned as follows:
- 39 (1) For each prior felony Class A conviction, 10 points.
 - 40 (1a) For each prior felony Class B1 conviction, 9 points.
 - 41 (2) For each prior felony Class B2, C, or D conviction, 6 points.
 - 42 (3) For each prior felony Class E, F, or G conviction, 4 points.
 - 43 (4) For each prior felony Class H or I conviction, 2 points.

- 1 (5) For each prior Class 1 misdemeanor conviction, 1 point, except that
2 convictions for Class 1 misdemeanor offenses under Chapter 20 of the
3 General Statutes, other than conviction for misdemeanor death by
4 vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for
5 purposes of determining a person's prior record for felony sentencing.
- 6 (6) If all the elements of the present offense are included in ~~the any prior~~
7 ~~offense, offense for which the offender was convicted, whether or not~~
8 that prior offense is used in determining prior record level, 1 point.
- 9 (7) If the offense was committed while the offender was on ~~probation or~~
10 supervised or unsupervised probation, parole, or post-release
11 supervision, or while the offender was serving a sentence of
12 imprisonment, or while the offender was on escape from a correctional
13 institution while serving a sentence of imprisonment, 1 point.

14 For purposes of determining prior record points under this subsection, a conviction for
15 a first degree rape or a first degree sexual offense committed prior to the effective date of
16 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any
17 other felony Class B offense committed prior to the effective date of this subsection shall
18 be treated as a felony Class B2 conviction."

19 Sec. 9. G.S. 15A-1340.21(b) reads as rewritten:

20 "(b) Prior Conviction Levels for Misdemeanor Sentencing. – The prior conviction
21 levels for misdemeanor sentencing are:

- 22 (1) Level I – 0 prior convictions.
23 (2) Level II – At least 1, but not more than 4 prior convictions.
24 (3) Level III – At least 5 prior convictions.

25 In determining the prior conviction level, a prior offense may be included if it is either a
26 felony or a misdemeanor at the time the offense for which the offender is being sentenced
27 is committed."

28 Sec. 10. G.S. 20-141.3(a) and (b) read as rewritten:

29 "(a) It shall be unlawful for any person to operate a motor vehicle on a street or
30 highway willfully in prearranged speed competition with another motor vehicle. Any
31 person violating the provisions of this subsection shall be guilty of a Class ~~2-1~~
32 misdemeanor.

33 (b) It shall be unlawful for any person to operate a motor vehicle on a street or
34 highway willfully in speed competition with another motor vehicle. Any person willfully
35 violating the provisions of this subsection shall be guilty of a Class ~~1-2~~ misdemeanor."

36 Sec. 11. G.S. 90-98 reads as rewritten:

37 "**§ 90-98. Attempt and conspiracy; penalties.**

38 ~~Any~~ Except as otherwise provided in this Article, any person who attempts or
39 conspires to commit any offense defined in this Article is punishable by imprisonment or
40 fine or both which may not exceed the maximum punishment prescribed for the offense,
41 the commission of guilty of an offense that is the same class as the offense which was the
42 object of the attempt or conspiracy. If the offense the person attempts or conspires to
43 commit is a felony, the attempt or conspiracy is punishable as a felony of the same class

1 ~~as that offense.~~ conspiracy and is punishable as specified for that class of offense and
2 prior record or conviction level in Article 81B of Chapter 15A of the General Statutes."

3 Sec. 12. G.S. 15-48 is repealed.

4 Sec. 13. This act becomes effective December 1, 1995.