

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 176

Short Title: Up Penalty for Misdemeanor Assault.

(Public)

Sponsors: Representatives Barnes, Michaux, Redwine; Sutton and Gardner.

Referred to: Judiciary II.

February 14, 1995

A BILL TO BE ENTITLED

AN ACT TO CREATE A NEW OFFENSE CLASS AND PUNISHMENT ROW FOR MISDEMEANOR ASSAULTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-33 reads as rewritten:

"§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 1 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

- (1) ~~Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon;~~
- (2) ~~Assaults a female, he being a male person at least 18 years of age;~~
- (3) ~~Assaults a child under the age of 12 years;~~
- (4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;
- (8) ~~Assaults an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to~~

1           ~~the provisions of Chapter 74E of the General Statutes, or a campus~~  
2           ~~police officer certified pursuant to the provisions of Chapter 17C or~~  
3           ~~Chapter 116 of the General Statutes, when the officer or employee is~~  
4           ~~discharging or attempting to discharge his official duties; or~~

- 5           (9) Commits an assault and battery against a sports official when the sports  
6           official is discharging or attempting to discharge official duties at a  
7           sports event, or immediately after the sports event at which the sports  
8           official discharged official duties. A 'sports official' is a person at a  
9           sports event who enforces the rules of the event, such as an umpire or  
10          referee, or a person who supervises the participants, such as a coach. A  
11          'sports event' includes any interscholastic or intramural athletic activity  
12          in a primary, middle, junior high, or high school, college, or university,  
13          any organized athletic activity sponsored by a community, business, or  
14          nonprofit organization, any athletic activity that is a professional or  
15          semiprofessional event, and any other organized athletic activity in the  
16          State.

17          (c) Unless the conduct is covered under some other provision of law providing  
18          greater punishment, any person who commits any assault, assault and battery, or affray is  
19          guilty of a Class 0 misdemeanor if, in the course of the assault, assault and battery, or  
20          affray, he:

- 21           (1) Inflicts serious injury upon another person or uses a deadly weapon;  
22           (2) Assaults a female, he being a male person at least 18 years of age;  
23           (3) Assaults a child under the age of 12 years; or  
24           (4) Assaults an officer or employee of the State or of any political  
25           subdivision of the State, when the officer or employee is discharging or  
26           attempting to discharge his official duties."

27          Sec. 2. G.S. 14-34 reads as rewritten:

28          "**§ 14-34. Assaulting by pointing gun.**

29          If any person shall point any gun or pistol at any person, either in fun or otherwise,  
30          whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class ~~4~~0  
31          misdemeanor."

32          Sec. 3. G.S. 15A-1332(c) reads as rewritten:

33          "(c) Presentence Commitment for Study. – When the court desires more detailed  
34          information as a basis for determining the sentence to be imposed than can be provided  
35          by a presentence investigation, the court may commit a defendant to the Department of  
36          Correction for study for the shortest period necessary to complete the study, not to exceed  
37          90 days, if that defendant has been charged with or convicted of any felony or a Class 0  
38          or Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than  
39          six months and if he consents. The period of commitment must end when the study is  
40          completed, and may not exceed 90 days. The Department must conduct a complete study  
41          of a defendant committed to it under this subsection, inquiring into such matters as the  
42          defendant's previous delinquency or criminal experience, his social background, his  
43          capabilities, his mental, emotional and physical health, and the availability of resources

1 or programs appropriate to the defendant. Upon completion of the study or the end of the  
2 90-day period, whichever occurs first, the Department of Correction must release the  
3 defendant to the sheriff of the county in which his case is docketed. The Department  
4 must forward the study to the clerk in that county, including whatever recommendations  
5 the Department believes will be helpful to a proper resolution of the case. When a  
6 defendant is returned from a presentence commitment for study, the conditions of pretrial  
7 release which obtained for the defendant before the commitment continue until judgment  
8 is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e)."

9 Sec. 4. G.S. 15A-1340.14(b) reads as rewritten:

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

11 (1) For each prior felony Class A conviction, 10 points.

12 (1a) For each prior felony Class B1 conviction, 9 points.

13 (2) For each prior felony Class B2, C, or D conviction, 6 points.

14 (3) For each prior felony Class E, F, or G conviction, 4 points.

15 (4) For each prior felony Class H or I conviction, 2 points.

16 (5) For each prior Class 0 or Class 1 misdemeanor conviction, 1 point,  
17 except that convictions for Class 1 misdemeanor offenses under Chapter  
18 20 of the General Statutes, other than conviction for misdemeanor death  
19 by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for  
20 purposes of determining a person's prior record for felony sentencing.

21 (6) If all the elements of the present offense are included in the prior  
22 offense, 1 point.

23 (7) If the offense was committed while the offender was on probation or  
24 parole, or while the offender was serving a sentence of imprisonment, or  
25 while the offender was on escape from a correctional institution while  
26 serving a sentence of imprisonment, 1 point.

27 For purposes of determining prior record points under this subsection, a conviction for  
28 a first degree rape or a first degree sexual offense committed prior to the effective date of  
29 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any  
30 other felony Class B offense committed prior to the effective date of this subsection shall  
31 be treated as a felony Class B2 conviction."

32 Sec. 5. G.S. 15A-1340.23 reads as rewritten:

33 "**§ 15A-1340.23. Punishment limits for each class of offense and prior conviction**  
34 **level.**

35 (a) Offense Classification; Default Classifications. – The offense classification is  
36 as specified in the offense for which the sentence is being imposed. If the offense is a  
37 misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

38 (b) Fines. – Any judgment that includes a sentence of imprisonment may also  
39 include a fine. Additionally, when the defendant is other than an individual, the  
40 judgment may consist of a fine only. If a community punishment is authorized, the  
41 judgment may consist of a fine only. Unless otherwise provided for a specific offense,  
42 the maximum fine that may be imposed is two hundred dollars (\$200.00) for a Class 3

1 misdemeanor and one thousand dollars (\$1,000) for a Class 2 misdemeanor. The amount  
 2 of the fine for a Class 1 and a Class 0 misdemeanor is in the discretion of the court.

3 (c) Punishment for Each Class of Offense and Prior Conviction Level; Punishment  
 4 Chart Described. – Unless otherwise provided for a specific offense, the authorized  
 5 punishment for each class of offense and prior conviction level is as specified in the chart  
 6 below. Prior conviction levels are indicated by the Roman numerals placed horizontally  
 7 on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed  
 8 vertically on the left side of the chart. Each grid on the chart contains the following  
 9 components:

- 10 (1) A sentence disposition or dispositions: 'C' indicates that a community  
 11 punishment is authorized; 'I' indicates that an intermediate punishment  
 12 is authorized; and 'A' indicates that an active punishment is authorized;  
 13 and
- 14 (2) A range of durations for the sentence of imprisonment: any sentence  
 15 within the duration specified is permitted.

16 **PRIOR CONVICTION LEVELS**

17 MISDEMEANOR

18 OFFENSE	LEVEL I	LEVEL II	LEVEL III
19 CLASS	No Prior	One to Four Prior	Five or More
	Convictions	Convictions	Prior Convictions
20 <u>0</u>	<u>1-60 days C/I/A</u>	<u>1-75 days C/I/A</u>	<u>1-150 days C/I/A</u>
21 <u>1</u>	<u>1-45 days C</u>	<u>1-45 days C/I/A</u>	<u>1-120 days C/I/A</u>
22 <u>2</u>	<u>1-30 days C</u>	<u>1-45 days C/I</u>	<u>1-60 days C/I/A</u>
23 <u>3</u>	<u>1-10 days C</u>	<u>1-15 days C/I</u>	<u>1-20 days C/I/A.</u> "

24 1343.1 reads as rewritten:  
 25

26 **"§ 15A-1343.1. Criteria for selection and sentencing to IMPACT.**

27 The criteria for selecting and sentencing youthful offenders to the Intensive  
 28 Motivational Program of Alternative Correctional Treatment as provided under G.S.  
 29 15A-1343(b1)(2a) shall be as follows:

- 30 (1) The offender must be between the ages of 16 and 25;
- 31 (2) The offender must be convicted of a Class 1 ~~misdemeanor~~  
 32 misdemeanor, Class 0 misdemeanor, or a felony.
- 33 (3) The offender must submit to a medical evaluation by a physician  
 34 approved by his probation or parole officer and must be certified by the  
 35 physician to be medically fit for program participation;
- 36 (4) The offender must not previously have served an active sentence in  
 37 excess of 120 days for an offense not subject to Article 81B of this  
 38 Chapter or of 30 days for an offense subject to Article 81B of this  
 39 Chapter."

40 Sec. 7. This act becomes effective December 1, 1995, and applies to offenses  
 41 committed on or after that date.