

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 403  
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Short Title: Increase Sentence/Ethnic Animosity.

(Public)

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Sponsors: Senator Simpson.

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Referred to: Judiciary II.

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April 1, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE INCREASED SENTENCES FOR CRIMES COMMITTED  
WITH ETHNIC ANIMOSITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.4(a) reads as rewritten:

**"§ 15A-1340.4. Presumptive punishment for felony other than Class A or Class B  
felony; prior felony convictions; consideration of aggravating and  
mitigating factors; written findings.**

(a) If the sentencing judge imposes a prison term on a person convicted of a felony other than a Class A or Class B felony, he may suspend the sentence and place the convicted felon on probation as provided by Article 82 of this Chapter. If the convicted felon is under 21 years of age at the time of conviction and the sentencing judge elects to impose an active prison term, the judge must either sentence the felon as a committed youthful offender in accordance with Article 3B of Chapter 148 of the General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14, or make a 'no benefit' finding as provided by G.S. 148-49.14 and impose a regular prison term. If the judge imposes a prison term, whether or not the term is suspended, and whether or not he sentences the convicted felon as a committed youthful offender, he must impose the presumptive term provided in this section unless, after consideration of aggravating or mitigating factors, or both, he decides to impose a longer or shorter term, or unless he imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of

1 the presumptive terms for each felony so consolidated (ii) that does not exceed the  
2 maximum term for the most serious felony so consolidated, and (iii) that is not shorter  
3 than the presumptive term for the most serious felony so consolidated. In imposing a  
4 prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may  
5 consider any aggravating and mitigating factors that he finds are proved by the  
6 preponderance of the evidence, and that are reasonably related to the purposes of  
7 sentencing, whether or not such aggravating or mitigating factors are set forth herein,  
8 but unless he imposes the term pursuant to a plea arrangement as to sentence under  
9 Article 58 of this Chapter, or unless when two or more convictions are consolidated for  
10 judgment he imposes a prison term (i) that does not exceed the total of the presumptive  
11 terms for each felony so consolidated, (ii) that does not exceed the maximum term for  
12 the most serious felony so consolidated, and (iii) that is not shorter than the presumptive  
13 term for the most serious felony so consolidated, he must consider each of the following  
14 aggravating and mitigating factors:

15 (1) Aggravating factors:

- 16 a. The defendant induced others to participate in the commission  
17 of the offense or occupied a position of leadership or  
18 dominance of other participants.
- 19 b. The offense was committed for the purpose of avoiding or  
20 preventing a lawful arrest or effecting an escape from custody.
- 21 c. The defendant was hired or paid to commit the offense.
- 22 d. The offense was committed to disrupt or hinder the lawful  
23 exercise of any governmental function or the enforcement of  
24 laws.
- 25 e. The offense was committed against a present or former: law  
26 enforcement officer, employee of the Department of Correction,  
27 jailer, fireman, emergency medical technician, ambulance  
28 attendant, justice or judge, clerk or assistant or deputy clerk of  
29 court, magistrate, prosecutor, juror, or witness against the  
30 defendant,, while engaged in the performance of his official  
31 duties or because of the exercise of his official duties.
- 32 f. The offense was especially heinous, atrocious, or cruel.
- 33 g. The defendant knowingly created a great risk of death to more  
34 than one person by means of a weapon or device which would  
35 normally be hazardous to the lives of more than one person.
- 36 h. The defendant held public office at the time of the offense and  
37 the offense related to the conduct of the office.
- 38 i. The defendant was armed with or used a deadly weapon at the  
39 time of the crime.
- 40 j. The victim was very young, or very old, or mentally or  
41 physically infirm.
- 42 k. The defendant committed the offense while on pretrial release  
43 on another felony charge.

- 1           l.     The defendant involved a person under the age of 16 in the  
2           commission of the crime.
- 3           m.     The offense involved an attempted or actual taking of property  
4           of great monetary value or damage causing great monetary loss,  
5           or the offense involved an unusually large quantity of  
6           contraband.
- 7           n.     The defendant took advantage of a position of trust or  
8           confidence to commit the offense.
- 9           o.     The defendant has a prior conviction or convictions for criminal  
10          offenses punishable by more than 60 days' confinement. Such  
11          convictions include those occurring in North Carolina courts  
12          and courts of other states, the District of Columbia, and the  
13          United States, provided that any crime for which the defendant  
14          was convicted in a jurisdiction other than North Carolina would  
15          have been a crime if committed in this State. Such prior  
16          convictions do not include any crime that is joinable, under G.S.  
17          Chapter 15A, with the crime or crimes for which the defendant  
18          is currently being sentenced.
- 19          p.     The offense involved the sale or delivery of a controlled  
20          substance to a minor.
- 21          q.     The offense for which the defendant stands convicted was  
22          committed against a victim because of the victim's race, color,  
23          religion, nationality, or country of origin.

24          Evidence necessary to prove an element of the offense may not be used to prove any  
25          factor in aggravation, and the same item of evidence may not be used to prove more  
26          than one factor in aggravation.

27          The judge may not consider as an aggravating factor the fact that the defendant  
28          exercised his right to a jury trial.

29           (2)    Mitigating factors:

- 30           a.     The defendant has not record of criminal convictions or a  
31           record consisting solely of misdemeanors punishable by not  
32           more than 60 days' imprisonment.
- 33           b.     The defendant committed the offense under duress, coercion,  
34           threat, or compulsion which was insufficient to constitute a  
35           defense but significantly reduced his culpability.
- 36           c.     The defendant was a passive participant or played a minor role  
37           in the commission of the offense.
- 38           d.     The defendant was suffering from a mental or physical  
39           condition that was insufficient to constitute a defense but  
40           significantly reduced his culpability for the offense.
- 41           e.     The defendant's immaturity or his limited mental capacity at the  
42           time of commission of the offense significantly reduced his  
43           culpability for the offense.

- 1 f. The defendant has made substantial or full restitution to the  
2 victim.
- 3 g. The victim was more than 16 years of age and was a voluntary  
4 participant in the defendant's conduct or consented to it.
- 5 h. The defendant aided in the apprehension of another felon or  
6 testified truthfully on behalf of the prosecution in another  
7 prosecution of a felony.
- 8 i. The defendant acted under strong provocation or the  
9 relationship between the defendant and the victim was  
10 otherwise extenuating.
- 11 j. The defendant could not reasonably foresee that his conduct  
12 would cause or threaten serious bodily harm or fear, or the  
13 defendant exercised caution to avoid such consequences.
- 14 k. The defendant reasonably believed that his conduct was legal.
- 15 l. Prior to arrest or at an early state of the criminal process, the  
16 defendant voluntarily acknowledged wrongdoing in connection  
17 with the offense to a law enforcement officer.
- 18 m. The defendant has been a person of good character or has a  
19 good reputation in the community in which he lives.
- 20 n. The defendant is a minor and has reliable supervision available.
- 21 o. The defendant has been honorably discharged from the United  
22 States armed services."

23 Sec. 2. G.S. 14-3 reads as rewritten:

24 **"§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in**  
25 **secrecy and ~~malice~~-malice, or with deceit and intent to defraud, defraud,**  
26 **or with ethnic animosity.**

27 (a) Except as provided in subsections (b) and (c), ~~subsection (b)~~, every person  
28 who shall be convicted of any misdemeanor for which no specific punishment is  
29 prescribed by statute shall be punishable by fine, by imprisonment for a term not  
30 exceeding two years, or by both, in the discretion of the court.

31 (b) If a misdemeanor offense as to which no specific punishment is prescribed be  
32 infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender  
33 shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a  
34 Class H felony.

35 (c) If any misdemeanor offense with punishment less than the punishment for a  
36 general misdemeanor is committed because of the victim's race, color, religion,  
37 nationality, or country of origin, the offender shall be guilty of a general misdemeanor.  
38 If any general misdemeanor offense is committed because of the victim's race, color,  
39 religion, nationality, or country of origin, the offender shall be guilty of a Class J  
40 felony."

41 Sec. 3. This act becomes effective October 1, 1991, and applies to offenses  
42 occurring on or after that date.