

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1028

Short Title: Active Sentences Required/Some Offenses.

(Public)

Sponsors: Senator Page.

Referred to: Judiciary I/Constitution

May 4, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT PERSONS CONVICTED OF CERTAIN CRIMES BE
2 SENTENCED TO AN ACTIVE PUNISHMENT OF IMPRISONMENT, TO
3 PROVIDE THAT A PERSON MAY BE SENTENCED TO AN INTERMEDIATE
4 OR ACTIVE PUNISHMENT FOR ASSAULT ON A FEMALE, AND TO AMEND
5 THE LAW REGARDING PRIOR CONVICTIONS AND THEIR EFFECT ON THE
6 PRIOR RECORD LEVEL FOR FELONY SENTENCING.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 14-190.6 reads as rewritten:

10 **"§ 14-190.6. Employing or permitting minor to assist in offense under Article.**

11 Every person 18 years of age or older who intentionally, in any manner, hires,
12 employs, uses or permits any minor under the age of 16 years to do or assist in doing any
13 act or thing constituting an offense under this Article and involving any material, act or
14 thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-
15 190.1, shall be guilty of a Class I felony. Notwithstanding the disposition under G.S.
16 15A-1340.17, the court shall impose an active punishment on any person convicted under
17 this section."

18 Sec. 2. G.S. 14-190.7 reads as rewritten:

19 **"§ 14-190.7. Dissemination to minors under the age of 16 years.**

1 Every person 18 years of age or older who knowingly disseminates to any minor
2 under the age of 16 years any material which he knows or reasonably should know to be
3 obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class I felony.
4 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
5 active punishment on any person convicted under this section."

6 Sec. 3. G.S. 14-190.8 reads as rewritten:

7 "**§ 14-190.8. Dissemination to minors under the age of 13 years.**

8 Every person 18 years of age or older who knowingly disseminates to any minor
9 under the age of 13 years any material which he knows or reasonably should know to be
10 obscene within the meaning of G.S. 14-190.1 shall be punished as a Class I felon.
11 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
12 active punishment on any person convicted under this section."

13 Sec. 4. G.S. 14-190.16(d) reads as rewritten:

14 "(d) Punishment and Sentencing. – Violation of this section is a Class E felony.
15 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
16 active punishment on any person convicted under this section."

17 Sec. 5. G.S. 14-190.17(d) reads as rewritten:

18 "(d) Punishment and Sentencing. – Violation of this section is a Class F felony.
19 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
20 active punishment on any person convicted under this section."

21 Sec. 6. G.S. 14-190.17A(d) reads as rewritten:

22 "(d) Punishment and Sentencing. – Violation of this section is a Class I felony.
23 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
24 active punishment on any person convicted under this section."

25 Sec. 7. G.S. 14-190.18(c) reads as rewritten:

26 "(c) Punishment and Sentencing. – Violation of this section is a Class F felony.
27 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
28 active punishment on any person convicted under this section."

29 Sec. 8. G.S. 14-190.19(c) reads as rewritten:

30 "(c) Punishment and Sentencing. – Violation of this section is a Class F felony.
31 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
32 active punishment on any person convicted under this section."

33 Sec. 9. G.S. 14-202.1(b) reads as rewritten:

34 "(b) Taking indecent liberties with children is punishable as a Class F felony.
35 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
36 active punishment on any person convicted under this section."

37 Sec. 10. G.S. 14-401.11(b) reads as rewritten:

38 "(b) ~~Penalties.~~ Penalties and sentencing.

39 (1) Any person violating the provisions of G.S. 14-401.11(a)(1):

- 40 a. Where the actual or possible effect on a person eating the food or
41 substance was or would be limited to mild physical discomfort
42 without any lasting effect, shall be guilty of a Class I felony.
43 Notwithstanding the disposition under G.S. 15A-1340.17, the

1 court shall impose an active punishment on any person convicted
2 under this section.

3 b. Where the actual or possible effect on a person eating the food or
4 substance was or would be greater than mild physical discomfort
5 without any lasting effect, shall be punished as a Class H felon.
6 Notwithstanding the disposition under G.S. 15A-1340.17, the
7 court shall impose an active punishment on any person convicted
8 under this section.

9 (2) Any person violating the provisions of G.S. 14-401.11(a)(2) shall be
10 punished as a Class F felon. Notwithstanding the disposition under G.S.
11 15A-1340.17, the court shall impose an active punishment on any
12 person convicted under this section.

13 (3) Any person violating the provisions of G.S. 14-401.11(a)(3) shall be
14 punished as a Class C felon. Notwithstanding the disposition under
15 G.S. 15A-1340.17, the court shall impose an active punishment on any
16 person convicted under this section."

17 Sec. 11. G.S. 14-318.2(a) reads as rewritten:

18 "(a) Any parent of a child less than 16 years of age, or any other person providing
19 care to or supervision of such child, who inflicts physical injury, or who allows physical
20 injury to be inflicted, or who creates or allows to be created a substantial risk of physical
21 injury, upon or to such child by other than accidental means is guilty of the Class 1
22 misdemeanor of child abuse. Notwithstanding the disposition under G.S. 15A-1340.23,
23 the court shall impose an active punishment on any person convicted under this section."

24 Sec. 12. G.S. 14-318.4 reads as rewritten:

25 **"§ 14-318.4. Child abuse a felony.**

26 (a) A parent or any other person providing care to or supervision of a child less
27 than 16 years of age who intentionally inflicts any serious physical injury upon or to the
28 child or who intentionally commits an assault upon the child which results in any serious
29 physical injury to the child is guilty of a Class E felony. Notwithstanding the disposition
30 under G.S. 15A-1340.17, the court shall impose an active punishment on any person
31 convicted under this section.

32 (a1) Any parent of a child less than 16 years of age, or any other person providing
33 care to or supervision of the child, who commits, permits, or encourages any act of
34 prostitution with or by the juvenile is guilty of child abuse and shall be punished as a
35 Class E felon. Notwithstanding the disposition under G.S. 15A-1340.17, the court shall
36 impose an active punishment on any person convicted under this section.

37 (a2) Any parent or legal guardian of a child less than 16 years of age who commits
38 or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.
39 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
40 active punishment on any person convicted under this section.

41 (b) The felony of child abuse is an offense additional to other civil and criminal
42 provisions and is not intended to repeal or preclude any other sanctions or remedies."

43 Sec. 13. G.S. 90-95(e) reads as rewritten:

1 "(e) The prescribed punishment and degree of any offense under this Article shall be
2 subject to the following conditions, but the punishment for an offense may be increased
3 only by the maximum authorized under any one of the applicable conditions:

4 (1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

5 (3) If any person commits a Class 1 misdemeanor under this Article and if
6 he has previously been convicted for one or more offenses under any
7 law of North Carolina or any law of the United States or any other state,
8 which offenses are punishable under any provision of this Article, he
9 shall be punished as a Class I felon. The prior conviction used to raise
10 the current offense to a Class I felony shall not be used to calculate the
11 prior record level;

12 (4) If any person commits a Class 2 misdemeanor, and if he has previously
13 been convicted for one or more offenses under any law of North
14 Carolina or any law of the United States or any other state, which
15 offenses are punishable under any provision of this Article, he shall be
16 guilty of a Class 1 misdemeanor. The prior conviction used to raise the
17 current offense to a Class 1 misdemeanor shall not be used to calculate
18 the prior conviction level;

19 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
20 selling or delivering a controlled substance to a person under 16 years of
21 age or a pregnant female shall be punished as a Class E felon.
22 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall
23 impose an active punishment on any person convicted under this
24 Article. Mistake of age is not a defense to a prosecution under this
25 section. It shall not be a defense that the defendant did not know that
26 the recipient was pregnant;

27 (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and
28 (e)(4), previous convictions for offenses shall be counted by the number
29 of separate trials at which final convictions were obtained and not by the
30 number of charges at a single trial;

31 (7) If any person commits an offense under this Article for which the
32 prescribed punishment requires that any sentence of imprisonment be
33 suspended, and if he has previously been convicted for one or more
34 offenses under any law of North Carolina or any law of the United
35 States or any other state, which offenses are punishable under any
36 provision of this Article, he shall be guilty of a Class 2 misdemeanor;

37 (8) Any person 21 years of age or older who commits an offense under G.S.
38 90-95(a)(1) on property used for an elementary or secondary school or
39 within 300 feet of the boundary of real property used for an elementary
40 or secondary school shall be punished as a Class E felon.
41 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall
42 impose an active punishment on any person convicted under this
43 section. For purposes of this subdivision, the transfer of less than five

1 grams of marijuana for no remuneration shall not constitute a delivery in
2 violation of G.S. 90-95(a)(1).

- 3 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal
4 institution or local confinement facility shall be guilty of a Class I
5 felony."

6 Sec. 14. G.S. 90-113.23(c) reads as rewritten:

7 "(c) Violation of this section is a Class 1 misdemeanor. However, delivery of drug
8 paraphernalia by a person over 18 years of age to someone under 18 years of age who is
9 at least three years younger than the defendant shall be punishable as a Class I ~~felony~~
10 felony; and notwithstanding the disposition under G.S. 15A-1340.17, the court shall
11 impose an active punishment on any person convicted of that offense."

12 Sec. 15. G.S. 14-33(b) reads as rewritten:

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

- 17 (1) Inflicts, or attempts to inflict, serious injury upon another person or uses
18 a deadly weapon;
19 (2) ~~Assaults a female, he being a male person at least 18 years of age;~~
20 (3) Assaults a child under the age of 12 years;
21 (4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;
22 (8) Assaults an officer or employee of the State or of any political
23 subdivision of the State, a company police officer certified pursuant to
24 the provisions of Chapter 74E of the General Statutes, or a campus
25 police officer certified pursuant to the provisions of Chapter 17C or
26 Chapter 116 of the General Statutes, when the officer or employee is
27 discharging or attempting to discharge his official duties; or
28 (9) Commits an assault and battery against a sports official when the sports
29 official is discharging or attempting to discharge official duties at a
30 sports event, or immediately after the sports event at which the sports
31 official discharged official duties. A 'sports official' is a person at a
32 sports event who enforces the rules of the event, such as an umpire or
33 referee, or a person who supervises the participants, such as a coach. A
34 'sports event' includes any interscholastic or intramural athletic activity
35 in a primary, middle, junior high, or high school, college, or university,
36 any organized athletic activity sponsored by a community, business, or
37 nonprofit organization, any athletic activity that is a professional or
38 semiprofessional event, and any other organized athletic activity in the
39 State."

40 Sec. 16. Article 8 of Chapter 14 of the General Statutes is amended by adding
41 a new section to read:

42 "**§ 14-33.2. Assault on a female.**

1 (a) A male person who is at least 18 years old and who assaults a female person is
2 guilty of a Class 1 misdemeanor punishable as provided in subsection (b) of this section.

3 (b) Notwithstanding the disposition under G.S. 15A-1340.23, the court may
4 impose an intermediate or active punishment on a person convicted of an offense under
5 this section."

6 Sec. 17. G.S. 15A-1340.14 reads as rewritten:

7 **"§ 15A-1340.14. Prior record level for felony sentencing.**

8 (a) Generally. – The prior record level of a felony offender is determined by
9 calculating the sum of the points assigned to each of the offender's prior convictions that
10 the court finds to have been proved in accordance with this section.

11 (b) Points. – Points are assigned as follows:

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

13 (1a) For each prior felony Class B1 conviction, 9 points.

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

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

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

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

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

24 (7) If the offense was committed while the offender was on probation or
25 parole, or while the offender was serving a sentence of imprisonment, or
26 while the offender was on escape from a correctional institution while
27 serving a sentence of imprisonment, ~~1 point.~~ 3 points.

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

33 (c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony
34 sentencing are:

35 (1) Level I – 0 points.

36 (2) Level II – At least 1, but not more than 4 points.

37 (3) Level III – At least 5, but not more than 8 points.

38 (4) Level IV – At least 9, but not more than 14 points.

39 (5) Level V – At least 15, but not more than 18 points.

40 (6) Level VI – At least 19 points.

41 In determining the prior record level, the classification of a prior offense is the
42 classification assigned to that offense at the time the offense for which the offender is
43 being sentenced is committed.

1 (d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of
2 determining the prior record level, if an offender is convicted of more than one offense in
3 a single superior court during one calendar week, ~~only the conviction for the offense with the~~
4 ~~highest point total is used.~~ each conviction is used. If an offender is convicted of more than
5 one offense in a single session of district court, ~~only one of the convictions~~ each conviction
6 is used.

7 (e) Classification of Prior Convictions From Other Jurisdictions. – Except as
8 otherwise provided in this subsection, a conviction occurring in a jurisdiction other than
9 North Carolina is classified as a Class I felony if the jurisdiction in which the offense
10 occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the
11 jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the
12 offender proves by the preponderance of the evidence that an offense classified as a
13 felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor
14 in North Carolina, the conviction is treated as that class of misdemeanor for assigning
15 prior record level points. If the State proves by the preponderance of the evidence that an
16 offense classified as either a misdemeanor or a felony in the other jurisdiction is
17 substantially similar to an offense in North Carolina that is classified as a Class I felony
18 or higher, the conviction is treated as that class of felony for assigning prior record level
19 points. If the State proves by the preponderance of the evidence that an offense classified
20 as a misdemeanor in the other jurisdiction is substantially similar to an offense classified
21 as a Class 1 misdemeanor in North Carolina, the conviction is treated as a Class 1
22 misdemeanor for assigning prior record level points.

23 (f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the
24 following methods:

- 25 (1) Stipulation of the parties.
- 26 (2) An original or copy of the court record of the prior conviction.
- 27 (3) A copy of records maintained by the Division of Criminal Information,
28 the Division of Motor Vehicles, or of the Administrative Office of the
29 Courts.
- 30 (4) Any other method found by the court to be reliable.

31 The State bears the burden of proving, by a preponderance of the evidence, that a
32 prior conviction exists and that the offender before the court is the same person as the
33 offender named in the prior conviction. The original or a copy of the court records or a
34 copy of the records maintained by the Division of Criminal Information, the Division of
35 Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as
36 that by which the offender is charged, is prima facie evidence that the offender named is
37 the same person as the offender before the court, and that the facts set out in the record
38 are true. For purposes of this subsection, 'a copy' includes a paper writing containing a
39 reproduction of a record maintained electronically on a computer or other data processing
40 equipment, and a document produced by a facsimile machine. The prosecutor shall make
41 all feasible efforts to obtain and present to the court the offender's full record. Evidence
42 presented by either party at trial may be utilized to prove prior convictions. Suppression
43 of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that

1 section during the sentencing stage of the criminal action, the court may grant a
2 continuance of the sentencing hearing. If asked by the defendant in compliance with G.S.
3 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the
4 defendant within a reasonable time sufficient to allow the defendant to determine if the
5 record available to the prosecutor is accurate."

6 Sec. 18. This act becomes effective December 1, 1995, and applies to
7 sentences imposed on or after that date.