

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 208

Short Title: Criminal Tech./Clarifying Amend.

(Public)

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Sponsors: Senators Ballance, Parnell, and Hartsell.

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Referred to: Judiciary II/Election Laws.

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February 15, 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, 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.