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SENATE BILL 208
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Short Title: Criminal Tech./Clarifying Amend.

(Public)

Sponsors:

Referred to:

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. 15A-1351(a) reads as rewritten:

"(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Department of Correction or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines. In addition to any other conditions of probation which the court may impose, the court shall impose,

1 when imposing a period or periods of imprisonment as a condition of special probation,
2 the condition that the defendant obey the Rules and Regulations of the Department of
3 Correction governing conduct of inmates, and this condition shall apply to the defendant
4 whether or not the court imposes it as a part of the written order. If imprisonment is for
5 continuous periods, the confinement may be in the custody of either the Department of
6 Correction or a local confinement facility. Noncontinuous periods of imprisonment
7 under special probation may only be served in a designated local confinement or
8 treatment facility. Except for probationary sentences for defendants convicted of a Class
9 1 misdemeanor under G.S. 14-72.1, probationary sentences of impaired driving under
10 G.S. 20-138.1 and probationary sentences which include a period of imprisonment in the
11 Intensive Motivational Program of Alternative Correctional Treatment (IMPACT) under
12 G.S. 15A-1343(b1)(2a), the total of all periods of confinement imposed as an incident of
13 special probation, but not including an activated suspended sentence, may not exceed six
14 months or one fourth the maximum sentence of imprisonment imposed for the offense,
15 whichever is less, and no confinement other than an activated suspended sentence may be
16 required beyond two years of conviction. For probationary sentences for defendants
17 convicted of a Class 1 misdemeanor under G.S. 14-72.1, the total of all periods of
18 confinement imposed as an incident of special probation, but not including an activated
19 suspended sentence, shall be 14 days or up to one-fourth the maximum sentence of
20 imprisonment imposed for the offense, whichever is greater. For probationary sentences
21 for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed
22 as an incident of special probation, but not including an activated suspended sentence,
23 shall not exceed one-fourth the maximum penalty allowed by law. For probationary
24 sentences which include a period of imprisonment in the Intensive Motivational Program
25 of Alternative Correctional Treatment (IMPACT) under G.S. 15A-1343(b1)(2a), the total
26 of all periods of confinement imposed as an incident of special probation, but not
27 including an activated suspended sentence, shall not exceed six months or one-half of the
28 maximum term of the suspended sentence, whichever is less. In imposing a sentence of
29 special probation, the judge may credit any time spent committed or confined, as a result
30 of the charge, to either the suspended sentence or to the imprisonment required for
31 special probation. The original period of probation, including the period of imprisonment
32 required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not
33 exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court
34 may revoke, modify, or terminate special probation as otherwise provided for
35 probationary sentences."

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

37 "(a) In superior court, the prosecution and the defense may discuss the possibility
38 that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses,
39 the prosecutor will not charge, will dismiss, or will move for the dismissal of other
40 charges, or will recommend or not oppose a particular ~~sentence, including a prison term~~
41 ~~different from the presumptive prison term applicable to the defendant, if convicted,~~
42 ~~under G.S. 15A-1340.4(f). sentence.~~ If the defendant is represented by counsel in the

1 discussions the defendant need not be present. The trial judge may participate in the
2 discussions."

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

4 "(c) Punishments for Each Class of Offense and Prior Record Level; Punishment
5 Chart Described. – The authorized punishment for each class of offense and prior record
6 level is as specified in the chart below. Prior record levels are indicated by the Roman
7 numerals placed horizontally on the top of the chart. Classes of offense are indicated by
8 the letters placed vertically on the left side of the chart. Each cell on the chart contains
9 the following 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; 'A' indicates that an active punishment is authorized; and
13 'Life Imprisonment Without Parole' indicates that the defendant shall be
14 imprisoned for the remainder of the prisoner's natural life.
- 15 (2) A presumptive range of minimum durations, if the sentence of
16 imprisonment is neither aggravated or mitigated; any minimum term of
17 imprisonment in that range is permitted unless the court finds pursuant
18 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is
19 appropriate. The presumptive range is the middle of the three ranges in
20 the cell.
- 21 (3) A mitigated range of minimum durations if the court finds pursuant to
22 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is
23 justified; in such a case, any minimum term of imprisonment in the
24 mitigated range is permitted. The mitigated range is the lower of the
25 three ranges in the cell.
- 26 (4) An aggravated range of minimum durations if the court finds pursuant
27 to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is
28 justified; in such a case, any minimum term of imprisonment in the
29 aggravated range is permitted. The aggravated range is the higher of the
30 three ranges in the cell.

31
32 **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
A	Life Imprisonment <u>Without Parole</u> or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	288-360		336-420	384-480		Life Imprisonment Aggravated Without Parole
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE

1	144-192	173-230	202-269	230-307	260-346	288-384	
2	Mitigated						
3							
4	A	A A	A A	A	A	DISPOSITION	
5	135-169	163-204	190-238	216-270	243-304	270-338	
6	Aggravated						
7	B2 108-135	130-163	152-190	173-216	194-243	216-270	PRESUMPTIVE
8	81-108	98-130	114-152	130-173	146-194	162-216	
9	Mitigated						
10							
11	A	A A	A	A	A	DISPOSITION	
12	63-79	86-108	100-125	115-144	130-162	145-181	Aggravated
13	C 50-63	69-86	80-100	92-115	104-130	116-145	PRESUMPTIVE
14	38-50	52-69	60-80	69-92	78-104	87-116	Mitigated
15							
16	A	A A	A	A	A	DISPOSITION	
17	55-69	66-82	89-111	101-126	115-144	126-158	Aggravated
18	D 44-55	53-66	71-89	81-101	92-115	101-126	PRESUMPTIVE
19	33-44	40-53	53-71	61-81	69-92	76-101	Mitigated
20							
21	I/A	I/AA	A	A	A	DISPOSITION	
22	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
23	E 20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
24	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
25							
26	I/A	I/AI/A	A	A	A	DISPOSITION	
27	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
28	F 13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
29	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
30							
31	I/A	I/AI/A	I/A	A	A	DISPOSITION	
32	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
33	G 10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
34	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
35							
36	C/I	I	I/A	I/A	A	DISPOSITION	
37	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
38	H 5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
39	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
40							
41	C	C/II	I/A	I/A	I/A	DISPOSITION	
42	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
43	I 4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE

1 3-4 3-44-5 4-6 5-7 6-8 Mitigated " Sec. 4. G.S. 15A-1444(e) reads
2 as rewritten:

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

11 Sec. 5. G.S. 113-136(j) reads as rewritten:

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

17 PART II. CLARIFYING AMENDMENTS.

18 Sec. 6. G.S. 15A-1340.11(2) reads as rewritten:

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

23 Sec. 7. G.S. 15A-1340.14(b) reads as rewritten:

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

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

26 (1a) For each prior felony Class B1 conviction, 9 points.

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

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

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

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

35 (6) If all the elements of the present offense are included in ~~the any prior~~
36 ~~offense,~~ offense for which the offender was convicted, whether or not
37 that prior offense is used in determining prior record level, 1 point.

38 (7) If the offense was committed while the offender was on ~~probation or~~
39 supervised probation, parole, or post-release supervision, or while the
40 offender was serving a sentence of imprisonment, or while the offender
41 was on escape from a correctional institution while serving a sentence of
42 imprisonment, 1 point.

1 For purposes of determining prior record points under this subsection, a conviction for
2 a first degree rape or a first degree sexual offense committed prior to the effective date of
3 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any
4 other felony Class B offense committed prior to the effective date of this subsection shall
5 be treated as a felony Class B2 conviction."

6 Sec. 8. G.S. 15A-1340.21(b) reads as rewritten:

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

9 (1) Level I – 0 prior convictions.

10 (2) Level II – At least 1, but not more than 4 prior convictions.

11 (3) Level III – At least 5 prior convictions.

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

15 Sec. 9. G.S. 90-98 reads as rewritten:

16 "**§ 90-98. Attempt and conspiracy; penalties.**

17 ~~Any~~ Except as otherwise provided in this Article, any person who attempts or
18 conspires to commit any offense defined in this Article is punishable by imprisonment or
19 fine or both which may not exceed the maximum punishment prescribed for the offense,
20 the commission of guilty of an offense that is the same class as the offense which was the
21 object of the attempt or conspiracy. If the offense the person attempts or conspires to
22 commit is a felony, the attempt or conspiracy is punishable as a felony of the same class
23 as that offense. conspiracy and is punishable as specified for that class of offense and
24 prior record or conviction level in Article 81B of Chapter 15A of the General Statutes."

25 Sec. 10. This act becomes effective December 1, 1996.