

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

2

SENATE BILL 28  
Judiciary II/Election Laws Committee Substitute Adopted 5/30/95

Short Title: Increase Some Crim. Penalties.

(Public)

---

Sponsors:

---

Referred to: Appropriations

---

January 26, 1995

A BILL TO BE ENTITLED

1  
2 AN ACT TO CREATE A NEW OFFENSE CLASS AND PUNISHMENT ROW FOR  
3 MISDEMEANOR ASSAULTS, TO CREATE THE FELONY OFFENSE OF  
4 ASSAULT ON A LAW ENFORCEMENT OFFICER, TO INCREASE THE  
5 PENALTIES FOR POSSESSION OF A FIREARM BY A FELON, TO LENGTHEN  
6 THE MINIMUM SENTENCES FOR FELONY OFFENSE CLASSES B2, C, AND  
7 D, AND TO AUTHORIZE AN ACTIVE SENTENCE FOR PRIOR RECORD  
8 LEVELS I AND II OF FELONY OFFENSE CLASS H.

9 The General Assembly of North Carolina enacts:

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

11 "**§ 14-33. Misdemeanor assaults, batteries, and affrays, simple and aggravated;**  
12 **punishments.**

13 (a) Any person who commits a simple assault or a simple assault and battery or  
14 participates in a simple affray is guilty of a Class ~~1~~2 misdemeanor.

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

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5           (4) ~~through (7) Repealed by Session Laws 1991, c. 525, s. 1;~~  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

24           (c) Unless the conduct is covered under some other provision of law providing  
25 greater punishment, any person who commits any assault, assault and battery, or affray is  
26 guilty of a Class A1 misdemeanor if, in the course of the assault, assault and battery, or  
27 affray, he or she:

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

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

35 **"§ 14-34. Assaulting by pointing gun.**

36           If any person shall point any gun or pistol at any person, either in fun or otherwise,  
37 whether such gun or pistol be loaded or not loaded, he shall be guilty of a Class ~~4~~A1  
38 misdemeanor."

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

40           "(c) Presentence Commitment for Study. – When the court desires more detailed  
41 information as a basis for determining the sentence to be imposed than can be provided  
42 by a presentence investigation, the court may commit a defendant to the Department of  
43 Correction for study for the shortest period necessary to complete the study, not to exceed

1 90 days, if that defendant has been charged with or convicted of any felony or a Class A1  
2 or Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than  
3 six months and if he consents. The period of commitment must end when the study is  
4 completed, and may not exceed 90 days. The Department must conduct a complete study  
5 of a defendant committed to it under this subsection, inquiring into such matters as the  
6 defendant's previous delinquency or criminal experience, his social background, his  
7 capabilities, his mental, emotional and physical health, and the availability of resources  
8 or programs appropriate to the defendant. Upon completion of the study or the end of the  
9 90-day period, whichever occurs first, the Department of Correction must release the  
10 defendant to the sheriff of the county in which his case is docketed. The Department  
11 must forward the study to the clerk in that county, including whatever recommendations  
12 the Department believes will be helpful to a proper resolution of the case. When a  
13 defendant is returned from a presentence commitment for study, the conditions of pretrial  
14 release which obtained for the defendant before the commitment continue until judgment  
15 is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e)."

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

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

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

19 (1a) For each prior felony Class B1 conviction, 9 points.

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

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

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

23 (5) For each prior Class A1 or Class 1 misdemeanor conviction, 1 point,  
24 except that convictions for Class 1 misdemeanor offenses under Chapter  
25 20 of the General Statutes, other than conviction for misdemeanor death  
26 by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for  
27 purposes of determining a person's prior record for felony sentencing.

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

30 (7) If the offense was committed while the offender was on probation or  
31 parole, or while the offender was serving a sentence of imprisonment, or  
32 while the offender was on escape from a correctional institution while  
33 serving a sentence of imprisonment, 1 point.

34 For purposes of determining prior record points under this subsection, a conviction for  
35 a first degree rape or a first degree sexual offense committed prior to the effective date of  
36 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any  
37 other felony Class B offense committed prior to the effective date of this subsection shall  
38 be treated as a felony Class B2 conviction."

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

40 "**§ 15A-1340.23. Punishment limits for each class of offense and prior conviction**  
41 **level.**

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

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two hundred dollars (\$200.00) for a Class 3 misdemeanor and one thousand dollars (\$1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.

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

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

**PRIOR CONVICTION LEVELS**

**MISDEMEANOR**

OFFENSE CLASS	<u>LEVEL I</u> No Prior Convictions	<u>LEVEL II</u> One to Four Prior Convictions	<u>LEVEL III</u> Five or More Prior Convictions
---------------	--	--	--

<u>A1</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> <u>except as</u> <u>provided in</u>
-----------	------------------------	------------------------	--

subsection (d)

1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-15 days C/I	1-20 days C/I/A.

(d) A person convicted of a Class A1 misdemeanor who has five or more prior misdemeanor convictions, two of which were assaults, shall be punished as a Class H felon."

Sec. 6. G.S. 15A-1343.1 reads as rewritten:

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

1 The criteria for selecting and sentencing youthful offenders to the Intensive  
2 Motivational Program of Alternative Correctional Treatment as provided under G.S.  
3 15A-1343(b1)(2a) shall be as follows:

- 4 (1) The offender must be between the ages of 16 and 25;
- 5 (2) The offender must be convicted of a Class 1 ~~misdemeanor~~ misdemeanor,  
6 Class A1 misdemeanor, or a felony.
- 7 (3) The offender must submit to a medical evaluation by a physician  
8 approved by his probation or parole officer and must be certified by the  
9 physician to be medically fit for program participation;
- 10 (4) The offender must not previously have served an active sentence in  
11 excess of 120 days for an offense not subject to Article 81B of this  
12 Chapter or of 30 days for an offense subject to Article 81B of this  
13 Chapter."

14 Sec. 7. G.S. 14-34.2 reads as rewritten:

15 **"§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental  
16 officers or employees, company police officers, or campus police officers.**

17 Any ~~Unless a person's conduct is covered under some other provision of law~~  
18 providing greater punishment, any person who commits an assault with a firearm or any  
19 other deadly weapon upon an officer or employee of the State or of any political  
20 subdivision of the State, a company police officer certified pursuant to the provisions of  
21 Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the  
22 provisions of Chapter 17C or Chapter 116 of the General Statutes, in the performance of  
23 his duties shall be guilty of a Class F felony."

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

26 **"§ 14-34.5. Assault with a firearm on a law enforcement officer.**

27 Any person who commits an assault with a firearm upon a law enforcement officer in  
28 the performance of his or her duties is guilty of a Class E felony."

29 Sec. 9. G.S. 14-415.1(a) reads as rewritten:

30 "(a) It shall be unlawful for any person who has been convicted of any crime set out  
31 in subsection (b) of this section to purchase, own, possess, or have in his custody, care, or  
32 control any handgun or other firearm with a barrel length of less than 18 inches or an  
33 overall length of less than 26 inches, or any weapon of mass death and destruction as  
34 defined in G.S. 14-288.8(c), within five years from the date of such conviction, or the  
35 unconditional discharge from a correctional institution, or termination of a suspended  
36 sentence, probation, or parole upon such conviction, whichever is later.

37 Every person violating the provisions of this section shall be punished as a Class ~~H~~G  
38 felon.

39 Nothing in this subsection would prohibit the right of any person to have possession  
40 of a firearm within his own home or on his lawful place of business."

41 Sec. 10. G.S. 15A-1340.17(c) reads as rewritten:

42 "(c) Punishments for Each Class of Offense and Prior Record Level; Punishment  
43 Chart Described. – The authorized punishment for each class of offense and prior record

1 level is as specified in the chart below. Prior record levels are indicated by the Roman  
 2 numerals placed horizontally on the top of the chart. Classes of offense are indicated by  
 3 the letters placed vertically on the left side of the chart. Each cell on the chart contains  
 4 the following components:

- 5 (1) A sentence disposition or dispositions: 'C' indicates that a community  
 6 punishment is authorized; 'I' indicates that an intermediate punishment  
 7 is authorized; 'A' indicates that an active punishment is authorized; and  
 8 'Life Imprisonment Without Parole' indicates that the defendant shall be  
 9 imprisoned for the remainder of the prisoner's natural life.
- 10 (2) A presumptive range of minimum durations, if the sentence of  
 11 imprisonment is neither aggravated or mitigated; any minimum term of  
 12 imprisonment in that range is permitted unless the court finds pursuant  
 13 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is  
 14 appropriate. The presumptive range is the middle of the three ranges in  
 15 the cell.
- 16 (3) A mitigated range of minimum durations if the court finds pursuant to  
 17 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is  
 18 justified; in such a case, any minimum term of imprisonment in the  
 19 mitigated range is permitted. The mitigated range is the lower of the  
 20 three ranges in the cell.
- 21 (4) An aggravated range of minimum durations if the court finds pursuant  
 22 to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is  
 23 justified; in such a case, any minimum term of imprisonment in the  
 24 aggravated range is permitted. The aggravated range is the higher of the  
 25 three ranges in the cell.

**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 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
	144-192	173-230		202-269	230-307	260-346	288-384
							PRESUMPTIVE
							Mitigated
	A	A	A	A	A	A	DISPOSITION
	<del>135-169</del>	<del>163-204</del>		<del>190-238</del>	<del>216-270</del>	<del>243-304</del>	<del>270-338</del>
							Aggravated

1	<del>B2 108-135</del>	<del>130-163</del>	<del>152-190</del>	<del>173-216</del>	<del>194-243</del>	<del>216-270</del>	<del>PRESUMPTIVE</del>
2	<del>81-108</del>	<del>98-130</del>	<del>114-152</del>	<del>130-173</del>	<del>146-194</del>	<del>162-216</del>	
3	Mitigated						
4	<u>157-196</u>	<u>189-237</u>	<u>220-276</u>	<u>251-313</u>	<u>282-353</u>	<u>313-392</u>	
5	Aggravated						
6	<u>B2 125-157</u>	<u>151-189</u>	<u>176-220</u>	<u>201-251</u>	<u>225-282</u>	<u>251-313</u>	<u>PRESUMPTIVE</u>
7	<u>94-125</u>	<u>114-151</u>	<u>132-176</u>	<u>151-201</u>	<u>169-225</u>	<u>188-251</u>	
8	Mitigated						
9							
10	A	A	A	A	A	A	DISPOSITION
11	<del>63-79</del>	<del>86-108</del>	<del>100-125</del>	<del>115-144</del>	<del>130-162</del>	<del>145-181</del>	<del>Aggravated</del>
12	<u>C -50-63</u>	<u>-69-86</u>	<u>-80-100</u>	<u>-92-115</u>	<u>104-130</u>	<u>116-145</u>	<u>PRESUMPTIVE</u>
13	<del>38-50</del>	<del>52-69</del>	<del>60-80</del>	<del>69-92</del>	<del>78-104</del>	<del>87-116</del>	<del>Mitigated</del>
14	<u>73-92</u>	<u>100-125</u>	<u>116-145</u>	<u>133-167</u>	<u>151-188</u>	<u>168-210</u>	<u>Aggravated</u>
15	<u>C 58-73</u>	<u>80-100</u>	<u>93-116</u>	<u>107-133</u>	<u>121-151</u>	<u>135-168</u>	<u>PRESUMPTIVE</u>
16	<u>44-58</u>	<u>60-80</u>	<u>70-93</u>	<u>80-107</u>	<u>90-121</u>	<u>101-135</u>	<u>Mitigated</u>
17							
18	A	A	A	A	A	A	DISPOSITION
19	<del>55-69</del>	<del>66-82</del>	<del>89-111</del>	<del>101-126</del>	<del>115-144</del>	<del>126-158</del>	<del>Aggravated</del>
20	<u>D -44-55</u>	<u>-53-66</u>	<u>-71-89</u>	<u>-81-101</u>	<u>-92-115</u>	<u>101-126</u>	<u>PRESUMPTIVE</u>
21	<del>33-44</del>	<del>40-53</del>	<del>53-71</del>	<del>61-81</del>	<del>69-92</del>	<del>76-101</del>	<del>Mitigated</del>
22	<u>64-80</u>	<u>77-95</u>	<u>103-129</u>	<u>117-146</u>	<u>133-167</u>	<u>146-183</u>	<u>Aggravated</u>
23	<u>D 51-64</u>	<u>61-77</u>	<u>82-103</u>	<u>94-117</u>	<u>107-133</u>	<u>117-146</u>	<u>PRESUMPTIVE</u>
24	<u>38-51</u>	<u>46-61</u>	<u>61-82</u>	<u>71-94</u>	<u>80-107</u>	<u>88-117</u>	<u>Mitigated</u>
25							
26	I/A	I/AA	A	A	A	A	DISPOSITION
27	<del>25-31</del>	<del>29-36</del>	<del>34-42</del>	<del>46-58</del>	<del>53-66</del>	<del>59-74</del>	<del>Aggravated</del>
28	<u>E 20-25</u>	<u>23-29</u>	<u>27-34</u>	<u>37-46</u>	<u>42-53</u>	<u>47-59</u>	<u>PRESUMPTIVE</u>
29	<del>15-20</del>	<del>17-23</del>	<del>20-27</del>	<del>28-37</del>	<del>32-42</del>	<del>35-47</del>	<del>Mitigated</del>
30							
31	I/A	I/AI/A	A	A	A	A	DISPOSITION
32	<del>16-20</del>	<del>19-24</del>	<del>21-26</del>	<del>25-31</del>	<del>34-42</del>	<del>39-49</del>	<del>Aggravated</del>
33	<u>F 13-16</u>	<u>15-19</u>	<u>17-21</u>	<u>20-25</u>	<u>27-34</u>	<u>31-39</u>	<u>PRESUMPTIVE</u>
34	<del>10-13</del>	<del>11-15</del>	<del>13-17</del>	<del>15-20</del>	<del>20-27</del>	<del>23-31</del>	<del>Mitigated</del>
35							
36	I/A	I/AI/A	I/A	A	A	A	DISPOSITION
37	<del>13-16</del>	<del>15-19</del>	<del>16-20</del>	<del>20-25</del>	<del>21-26</del>	<del>29-36</del>	<del>Aggravated</del>
38	<u>G 10-13</u>	<u>12-15</u>	<u>13-16</u>	<u>16-20</u>	<u>17-21</u>	<u>23-29</u>	<u>PRESUMPTIVE</u>
39	<del>8-10</del>	<del>9-12</del>	<del>10-13</del>	<del>12-16</del>	<del>13-17</del>	<del>17-23</del>	<del>Mitigated</del>
40							
41	C/I/ <u>A</u>	<u>I/A</u>	<u>I/A</u>	<u>I/A</u>	<u>A</u>	<u>A</u>	DISPOSITION
42	<del>6-8</del>	<del>8-10</del>	<del>10-12</del>	<del>11-14</del>	<del>15-19</del>	<del>20-25</del>	<del>Aggravated</del>
43	<u>H 5-6</u>	<u>6-8</u>	<u>8-10</u>	<u>9-11</u>	<u>12-15</u>	<u>16-20</u>	<u>PRESUMPTIVE</u>

1	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated		
2									
3		C	C/II	I/A	I/A	I/A	DISPOSITION		
4	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated		
5	I 4-6	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE	
6	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated		
7									

8           Sec. 11. This act becomes effective December 1, 1995, and applies to offenses  
9 committed on or after that date.