

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 14

Short Title: Reclassify Prison Offenses.

(Public)

Sponsors: Senators Jenkins; Albertson, Cooper, Dalton, Gulley, Hoyle, Kerr, Lucas, Miller, Odom, Perdue, Phillips, Rand, Warren, Weinstein, and Wellons.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE A PERSON IS INCARCERATED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-255 reads as rewritten:

"§ 14-255. Escape of working prisoners from custody.

If any prisoner removed from the local confinement facility or satellite jail/work release unit of a county pursuant to G.S. 162-58 shall escape from the person having him in custody or the person supervising him, he shall be guilty of a Class 3-1 misdemeanor."

Section 2. G.S. 14-256 reads as rewritten:

"§ 14-256. Prison breach and escape from county or municipal confinement facilities or officers.

If any person shall break any prison, jail or lockup maintained by any county or municipality in North Carolina, being lawfully confined therein, or shall escape from the lawful custody of any superintendent, guard or officer of such prison, jail or lockup, he shall be guilty of a Class 1 misdemeanor, except that the person is guilty of a Class 1-H felony if:

- (1) He has been convicted of a felony and has been committed to the facility pending transfer to the State prison system; or

1 (2) He is serving a sentence imposed upon conviction of a felony."

2 Section 3. G.S. 148-45 reads as rewritten:

3 **"§ 148-45. Escaping or attempting escape from State prison system; failure of**  
4 **conditionally and temporarily released prisoners and certain youthful**  
5 **offenders to return to custody of Department of Correction.**

6 (a) Any person in the custody of the Department of Correction in any of the  
7 classifications hereinafter set forth who shall escape from the State prison system, shall  
8 for the first such offense, except as provided in subsection (g) of this section, be guilty of  
9 a Class ~~I-felony~~-1 misdemeanor:

10 (1) A prisoner serving a sentence imposed upon conviction of a  
11 misdemeanor;

12 (2) A person who has been charged with a misdemeanor and who has been  
13 committed to the custody of the Department of Correction under the  
14 provisions of G.S. 162-39;

15 (3) Repealed by Session Laws 1985, c. 226, s. 4.

16 (4) A person who shall have been convicted of a misdemeanor and who  
17 shall have been committed to the Department of Correction for  
18 presentence diagnostic study under the provisions of G.S. 15A-1332(c).

19 (b) Any person in the custody of the Department of Correction, in any of the  
20 classifications hereinafter set forth, who shall escape from the State prison system, shall,  
21 except as provided in subsection (g) of this section, be punished as a Class ~~I-H~~ felon.

22 (1) A prisoner serving a sentence imposed upon conviction of a felony;

23 (2) A person who has been charged with a felony and who has been  
24 committed to the custody of the Department of Correction under the  
25 provisions of G.S. 162-39;

26 (3) Repealed by Session Laws 1985, c. 226, s. 5.

27 (4) A person who shall have been convicted of a felony and who shall have  
28 been committed to the Department of Correction for presentence  
29 diagnostic study under the provisions of G.S. 15A-1332(c); or

30 (5) Any person previously convicted of escaping or attempting to escape  
31 from the State prison system.

32 (c) Repealed by Session Laws 1979, c. 760, s. 5.

33 (d) Any person who aids or assists other persons to escape or attempt to escape  
34 from the State prison system shall be guilty of a Class 1 misdemeanor.

35 (e) Repealed by Session Laws 1983, c. 465, s. 5.

36 (f) Any person convicted of an escape or attempt to escape classified as a felony  
37 by this section shall be immediately classified and treated as a convicted felon even if  
38 such person has time remaining to be served in the State prison system on a sentence or  
39 sentences imposed upon conviction of a misdemeanor or misdemeanors.

40 (g) (1) Any person convicted and in the custody of the North  
41 Carolina Department of Correction and ordered or otherwise assigned  
42 to work under the work-release program, G.S. 148-33.1, or any  
43 convicted person in the custody of the North Carolina Department of

1 Correction and temporarily allowed to leave a place of confinement  
2 by the Secretary of Correction or his designee or other authority of  
3 law, who shall fail to return to the custody of the North Carolina  
4 Department of Correction, shall be guilty of the crime of escape and  
5 subject to the applicable provisions of this section and shall be  
6 deemed an escapee. For the purpose of this subsection, escape is  
7 defined to include, but is not restricted to, willful failure to return to  
8 an appointed place and at an appointed time as ordered.

- 9 (2) If a person, who would otherwise be guilty of a first violation of G.S.  
10 148-45(g)(1), voluntarily returns to his place of confinement within 24  
11 hours of the time at which he was ordered to return, such person shall  
12 not be charged with an escape as provided in this section but shall be  
13 subject to such administrative action as may be deemed appropriate for  
14 an escapee by the Department of Correction; said escapee shall not be  
15 allowed to be placed on work release for a four-month period or for the  
16 balance of his term if less than four months; provided, however, that if  
17 such person commits a subsequent violation of this section then such  
18 person shall be charged with that offense and, if convicted, punished  
19 under the provisions of this section."

20 Section 4. G.S. 90-95(e) reads as rewritten:

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

- 24 (1), (2) Repealed by Session Laws 1979, c. 760, s. 5.  
25 (3) If any person commits a Class 1 misdemeanor under this Article and if  
26 he has previously been convicted for one or more offenses under any  
27 law of North Carolina or any law of the United States or any other state,  
28 which offenses are punishable under any provision of this Article, he  
29 shall be punished as a Class I felon. The prior conviction used to raise  
30 the current offense to a Class I felony shall not be used to calculate the  
31 prior record level;  
32 (4) If any person commits a Class 2 misdemeanor, and if he has previously  
33 been convicted for one or more offenses under any law of North  
34 Carolina or any law of the United States or any other state, which  
35 offenses are punishable under any provision of this Article, he shall be  
36 guilty of a Class 1 misdemeanor. The prior conviction used to raise the  
37 current offense to a Class 1 misdemeanor shall not be used to calculate  
38 the prior conviction level;  
39 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by  
40 selling or delivering a controlled substance to a person under 16 years of  
41 age or a pregnant female shall be punished as a Class D felon. Mistake  
42 of age is not a defense to a prosecution under this section. It shall not be

1 a defense that the defendant did not know that the recipient was  
2 pregnant;

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

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

13 (8) Any person 21 years of age or older who commits an offense under G.S.  
14 90-95(a)(1) on property used for an elementary or secondary school or  
15 within 300 feet of the boundary of real property used for an elementary  
16 or secondary school shall be punished as a Class E felon. For purposes  
17 of this subdivision, the transfer of less than five grams of marijuana for  
18 no remuneration shall not constitute a delivery in violation of G.S. 90-  
19 95(a)(1).

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

23 Section 5. G.S. 148-46.1 reads as rewritten:

24 **"§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in**  
25 **incapacity to perform assigned duties.**

26 Any person serving a sentence or sentences within the State prison system who,  
27 during the term of such imprisonment, willfully and intentionally inflicts upon himself  
28 any injury resulting in a permanent or temporary incapacity to perform work or duties  
29 assigned to him by the State Department of Correction, or any prisoner who aids or abets  
30 any other prisoner in the commission of such offense, shall be punished as a Class ~~I~~H  
31 felon."

32 Section 6. G.S. 90-95(b) reads as rewritten:

33 "(b) Except as provided in subsections (h) and (i) of this section, any person who  
34 violates G.S. 90-95(a)(1) with respect to:

35 (1) A controlled substance classified in Schedule I or II shall be punished as  
36 a Class H ~~felon; felon~~, except that the sale of a controlled substance  
37 classified in Schedule I or II shall be punished as a Class G felon;

38 (2) A controlled substance classified in Schedule III, IV, V, or VI shall be  
39 punished as a Class I felon, except that the sale of a controlled substance  
40 classified in Schedule III, IV, V, or VI shall be punished as a Class H  
41 felon. ~~but the~~ The transfer of less than 5 grams of marijuana for no  
42 remuneration shall not constitute a delivery in violation of G.S. 90-  
43 95(a)(1)."

1           Section 7. This act becomes effective December 1, 1997, and applies to  
2 offenses on or after that date.