

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 511
Senate Judiciary Committee Substitute Adopted 6/26/19
Senate Judiciary Committee Substitute Adopted 7/10/19

Short Title: North Carolina First Step Act.

(Public)

Sponsors:

Referred to:

April 1, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE JUDICIAL DISCRETION IN SENTENCING FOR DRUG
3 TRAFFICKING OFFENSES, TO ALLOW ELIGIBLE PRISONERS SENTENCED FOR
4 DRUG TRAFFICKING OFFENSES TO BE RELEASED EARLY ON POST-RELEASE
5 SUPERVISION, AND TO AUTHORIZE THE COLLECTION OF CRIMINAL JUSTICE
6 DATA.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** This act shall be known and may be cited as "The North Carolina First
9 Step Act."

10 **SECTION 2.(a)** G.S. 90-95(h) reads as rewritten:

11 "(h) Notwithstanding any other provision of law, the following provisions apply except as
12 otherwise provided in this Article.

13 ...

14 (5) Except as provided in this ~~subdivision~~, subdivision or subdivision (5a) of this
15 subsection, a person being sentenced under this subsection may not receive a
16 suspended sentence or be placed on probation. The sentencing judge may
17 reduce the fine, or impose a prison term less than the applicable minimum
18 prison term provided by this subsection, or suspend the prison term imposed
19 and place a person on probation when such person has, to the best of ~~his~~ the
20 person's knowledge, provided substantial assistance in the identification,
21 arrest, or conviction of any accomplices, accessories, co-conspirators, or
22 principals if the sentencing judge enters in the record a finding that the person
23 to be sentenced has rendered such substantial assistance.

24 (5a) A judge sentencing a person for a conviction pursuant to G.S. 90-95(h) or
25 G.S. 90-95(i) for conspiracy to commit a violation of G.S. 90-95(h) shall
26 impose the applicable minimum prison term provided by this subsection. The
27 sentencing judge may reduce the fine and sentence the person consistent with
28 the applicable offense classification and prior record level provided in
29 G.S. 15A-1340.17, if the sentencing judge enters into the record findings that
30 all of the following are met:

31 a. The defendant has accepted responsibility for the defendant's criminal
32 conduct.

33 b. The defendant has not previously been convicted of a felony under
34 G.S. 90-95.



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- c. The defendant did not use violence or a credible threat of violence, or possess a firearm or other dangerous weapon, in the commission of the offense for which the defendant is being sentenced.
- d. Substantial evidence does not exist that the defendant was involved in the sale or delivery of a controlled substance during the commission of the offense for which the defendant is being sentenced.
- e. The defendant has admitted that he or she has a substance abuse disorder involving a controlled substance and is currently participating in or has agreed to participate in a treatment program to address the substance abuse disorder.
- f. Imposition of the mandatory minimum prison term would result in substantial injustice and is not necessary for the protection of the public.

...."

SECTION 2.(b) This section becomes effective December 1, 2019, and applies to sentences ordered on or after that date.

SECTION 3. G.S. 90-95 is amended by adding a new subsection to read:

"(j) Beginning December 1, 2020, and annually thereafter, the Administrative Office of the Courts shall publish on its Web site a report on the number of sentences modified under G.S. 90-95(h)(5a) in the prior calendar year."

SECTION 4.(a) G.S. 15A-1368.2 reads as rewritten:

"§ 15A-1368.2. Post-release supervision eligibility and procedure.

(a) Except as otherwise provided in this ~~subsection, subsection~~ or subsection (a1) of this section, a prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to ~~his~~ the prisoner's maximum imposed prison term less 12 months in the case of Class B1 through E felons and less nine months in the case of Class F through I felons, less any earned time awarded by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the custodian of a local confinement facility under G.S. 15A-1340.13(d). A prisoner whose maximum sentence is established pursuant to G.S. 15A-1340.17(f) shall be released from prison for post-release supervision on the date equivalent to ~~his or her~~ the prisoner's maximum imposed prison term less 60 months, less any earned time awarded by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to ~~his~~ the prisoner's maximum prison term less 12 months for Class B1 through E felons and less nine months for Class F through I felons.

(a1) Prior to the term of post-release supervision provided in subsection (a) of this section, a prisoner serving an active sentence solely for a conviction under G.S. 90-95(h) or G.S. 90-95(i) shall be eligible for release from prison for post-release supervision for the remainder of the prisoner's sentence if the Commission determines all of the following are met:

- (1) The prisoner has served at least 24 months of the prisoner's sentence.
- (2) The defendant was not sentenced under G.S. 90-95(h)(5).
- (3) There is a substantial likelihood that the prisoner will conform to the reasonable conditions of post-release supervision.
- (4) The prisoner's release at the time would not unduly depreciate the seriousness of the prisoner's crime or promote disrespect for the law.
- (5) The prisoner's release will substantially enhance the prisoner's ability of leading a law-abiding life.
- (6) There is a substantial likelihood that the prisoner will not engage in further criminal conduct.

...."

1 **SECTION 4.(b)** This section becomes effective December 1, 2019, and applies to
2 sentences ordered on or before November 30, 2019.

3 **SECTION 5.(a)** Except as otherwise provided in this section, a person serving an
4 active sentence imposed solely for a violation of G.S. 90-95(h) or conspiracy to commit a
5 violation under G.S. 90-95(i) committed before the effective date of this act may file a motion
6 for appropriate relief in accordance with Article 89 of Chapter 15A of the General Statutes for a
7 modification of the person's sentence under the authority granted in G.S. 90-95(h)(5a), as enacted
8 in Section 2 of this act. A person sentenced under G.S. 90-95(h)(5) is ineligible to file a motion
9 for appropriate relief for a sentence modification under this section. Notwithstanding any
10 provision of Article 89 of Chapter 15A of the General Statutes to the contrary, all of the following
11 conditions apply to a motion for appropriate relief filed pursuant to this section:

- 12 (1) A person seeking a sentence modification under this section must file a motion
13 for appropriate relief within 36 months of the effective date of this act.
- 14 (2) The court shall require the State to respond to a motion for appropriate relief
15 filed pursuant to this section within 60 days of the date of the filing and shall
16 hold any hearing deemed necessary by the court within 180 days of the date
17 of the filing.
- 18 (3) The court may only modify a sentence under this section if the court finds the
19 requirements of G.S. 90-95(h)(5a) have been met.

20 **SECTION 5.(b)** This section becomes effective December 1, 2019, and applies to
21 sentences ordered on or before November 30, 2019.

22 **SECTION 6.(a)** The Department of Information Technology, Government Data
23 Analytics Center, and the Administrative Office of the Courts shall conduct a statewide study to
24 identify the criminal justice data elements currently collected and maintained by jails, courts, and
25 prisons. The purpose of the study is (i) to identify gaps in data and accessibility of data for
26 research purposes and for use by judicial officials and other stakeholders and (ii) to identify
27 solutions for improving availability and accessibility of data to inform public policy through an
28 integrated tool or other system. In conducting this study, the Department may seek input from
29 local or regional detention facility administrators, the University of North Carolina at Chapel Hill
30 School of Government, the North Carolina Sentencing and Policy Commission, the North
31 Carolina Sheriffs' Association, organizations concerned with criminal justice data, and any other
32 stakeholders the Department deems appropriate.

33 **SECTION 6.(b)** The study shall examine at least all of the following issues:

- 34 (1) The data elements currently being collected by each local and regional
35 detention facility with regard to each individual admitted to jail and each
36 facility's operation (e.g., admissions, population, revenue, costs), and the
37 current system for collecting, recording, maintaining, and searching these data
38 elements.
- 39 (2) The data elements currently being collected by the courts with regard to
40 individuals who have been charged with infractions or criminal offenses,
41 including magistrates' records and information from the courtroom clerk such
42 as continuances, appearances, and failures to appear, and the current system
43 for collecting, recording, maintaining, and searching these data elements.
- 44 (3) The data elements needed for policymakers to understand the criminal justice
45 system, including the demographics, reasons for involvement, and outcomes
46 for individuals involved in the system at the county and statewide levels.
- 47 (4) Any gaps in data elements and whether any data elements that are currently
48 collected are inaccessible or made difficult to access or study because of
49 certain aspects of data management and data entry, and specific actions to
50 address those barriers to accessing and using data elements that are currently

- 1 collected such as standardization of data entry, use of unique identifiers, and
- 2 avoiding overwriting of data elements.
- 3 (5) Steps that would be necessary to create a statewide program to collect
- 4 county-level criminal justice data to inform policymakers and other
- 5 stakeholders, including solutions for integrating data from different systems,
- 6 including options for integrating data that currently are collected, as well as
- 7 for addressing any data gaps identified, and options for making data elements
- 8 available to judicial officials and other stakeholders, as well as for research
- 9 purposes, in an open electronic format. Any recommendations should
- 10 consider any related privacy or data security issues.
- 11 (6) A review of best practices of other states that collect local-level criminal
- 12 justice data and integrate them with data from the court system and other state
- 13 systems.
- 14 (7) Any other related issues that the Department deems necessary.
- 15 **SECTION 6.(c)** The Department shall report findings and recommendations to the
- 16 Joint Legislative Oversight Committee on Information Technology and the Joint Legislative
- 17 Oversight Committee on Justice and Public Safety no later than March 15, 2020.
- 18 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
- 19 law.