

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-80
HOUSE BILL 175

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND
POLICY ADVISORY COMMISSION'S RECOMMENDATION TO MAKE
CERTAIN TECHNICAL, CLARIFYING, AND CONFORMING AMENDMENTS
TO STRUCTURED SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. – For a first conviction under subsection (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 defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, ~~he~~the judge may pronounce such other sentence as ~~he~~the judge finds appropriate."

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

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

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

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

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment <u>Without Parole</u> or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A 384-480	DISPOSITION Aggravated
B1	192-240 144-192	230-288 173-230	269-336 202-269	307-384 230-307	346-433 260-346	384-480 288-384	PRESUMPTIVE Mitigated

	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

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Section 4. G.S. 15A-1444(e) reads as rewritten:

"(e) Except as provided in ~~subsection (a1)~~ subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest

has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State."

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

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

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

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

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

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

- (1) For each prior felony Class A conviction, 10 points.
- (1a) For each prior felony Class B1 conviction, 9 points.
- (2) For each prior felony Class B2, C, or D conviction, 6 points.
- (3) For each prior felony Class E, F, or G conviction, 4 points.
- (4) For each prior felony Class H or I conviction, 2 points.
- (5) For each prior Class A1 or Class 1 misdemeanor conviction, 1 point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.
- (6) If all the elements of the present offense are included in ~~the any prior offense, offense for which the offender was convicted, whether or not~~ the prior offense or offenses were used in determining prior record level, 1 point.
- (7) If the offense was committed while the offender was on ~~probation or supervised or unsupervised probation, parole, or post-release supervision,~~ supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

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

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

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

- (1) Level I – 0 prior convictions.
- (2) Level II – At least 1, but not more than 4 prior convictions.
- (3) Level III – At least 5 prior convictions.

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

Section 9. G.S. 90-98 reads as rewritten:

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

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

Section 10. G.S. 15-48 is repealed.

Section 11. G.S. 7A-598 reads as rewritten:

"§ 7A-598. Grounds for order.

An order may issue only on affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

- (1) That there is probable cause to believe that an offense has been committed which if committed by an adult would be ~~punishable by imprisonment for more than two years; a felony offense;~~ and
- (2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense."

Section 12. G.S. 7A-600 reads as rewritten:

"§ 7A-600. Nontestimonial identification order at request of juvenile.

A juvenile in custody for or charged with an offense which if committed by an adult would be ~~punishable by imprisonment for more than two years a felony offense~~ may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 13. G.S. 15A-263(a) reads as rewritten:

"(a) In General. – Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the State if the judge finds:

- (1) That there is reasonable suspicion to believe that ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;
- (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and
- (3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 14. G.S. 15A-273 reads as rewritten:

"§ 15A-273. Basis for order.

An order may issue only on an affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

- (1) That there is probable cause to believe that ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;
- (2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 15. G.S. 15A-281 reads as rewritten:

"§ 15A-281. Nontestimonial identification order at request of defendant.

A person arrested for or charged with ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 16. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.

Governor

Approved 5:46 p.m. this 22nd day of May, 1997