

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 28

Short Title: Increase Some Crim. Penalties.

(Public)

Sponsors: Senators Odom; Perdue, Albertson, Plexico, Hoyle, Kerr, Warren, Gulley, Cooper, Plyler, and Rand.

Referred to: Judiciary II/Election Laws.

January 26, 1995

A BILL TO BE ENTITLED

AN ACT TO CREATE A NEW OFFENSE CLASS AND PUNISHMENT ROW FOR MISDEMEANOR ASSAULTS, TO INCREASE THE PUNISHMENT FOR THE FELONY OFFENSES OF COMMON LAW ROBBERY, BREAKING AND ENTERING, ASSAULT ON A LAW ENFORCEMENT OFFICER, AND POSSESSION OF A FIREARM BY A FELON, TO LENGTHEN THE MINIMUM SENTENCES FOR FELONY OFFENSE CLASSES B2, C, AND D.

The General Assembly of North Carolina enacts:

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

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

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 4-2 misdemeanor.

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

(1) ~~Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon;~~

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3 ~~(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;~~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

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

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

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

33 **"§ 14-34. Assaulting by pointing gun.**

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

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

38 "(c) Presentence Commitment for Study. – When the court desires more detailed
39 information as a basis for determining the sentence to be imposed than can be provided
40 by a presentence investigation, the court may commit a defendant to the Department of
41 Correction for study for the shortest period necessary to complete the study, not to exceed
42 90 days, if that defendant has been charged with or convicted of any felony or a Class A1
43 or Class 1 misdemeanor crime or crimes for which he may be imprisoned for more than

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

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

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

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

17 (1a) For each prior felony Class B1 conviction, 9 points.

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

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

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

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

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

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

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

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

38 "**§ 15A-1340.23. Punishment limits for each class of offense and prior conviction**
39 **level.**

40 (a) Offense Classification; Default Classifications. – The offense classification is
41 as specified in the offense for which the sentence is being imposed. If the offense is a
42 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	LEVEL I No Prior Convictions	LEVEL II One to Four Prior Convictions	LEVEL III Five or More Prior Convictions
A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A, <u>except as 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 F felon."

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

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

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

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

11 Sec. 7. G.S. 14-87.1 reads as rewritten:

12 **"§ 14-87.1. Punishment for common-law robbery.**

13 Robbery as defined at common law, other than robbery with a firearm or other
14 dangerous weapon as defined by G.S. 14-87, shall be punishable as a Class ~~G~~F felony."

15 Sec. 8. G.S. 14-54(a) reads as rewritten:

16 "(a) Any person who breaks or enters any building with intent to commit any
17 felony or larceny therein shall be punished as a Class ~~H~~G felon."

18 Sec. 9. G.S. 14-34.2 reads as rewritten:

19 **"§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental
20 officers or employees, company police officers, or campus police officers.**

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

28 Sec. 10. Article 8 of Chapter 14 of the General Statutes is amended by adding
29 a new section to read:

30 **"§ 14-34.5. Assault with a firearm on a law enforcement officer.**

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

33 Sec. 11. G.S. 14-415.1(a) reads as rewritten:

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

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

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

3 Sec. 12. 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**

33

	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	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	
							Mitigated

43

1								
2								
3		A	A	A	A	A	DISPOSITION	
4		135-169	163-204	190-238	216-270	243-304	270-338	
5		Aggravated						
6	B2	108-135	130-163	152-190	173-216	194-243	216-270	PRESUMPTIVE
7		81-108	98-130	114-152	130-173	146-194	162-216	
8		Mitigated						
9		<u>180-225</u>	<u>216-270</u>	<u>252-315</u>	<u>288-360</u>	<u>324-405</u>	<u>360-450</u>	
10		Aggravated						
11	B2	<u>144-180</u>	<u>173-216</u>	<u>202-252</u>	<u>230-288</u>	<u>259-924</u>	<u>288-360</u>	PRESUMPTIVE
12		<u>108-144</u>	<u>130-173</u>	<u>152-202</u>	<u>173-230</u>	<u>194-259</u>	<u>216-288</u>	
13		Mitigated						
14								
15		A	A	A	A	A	DISPOSITION	
16		63-79	86-108	100-125	115-144	130-162	145-181	Aggravated
17	C	50-63	69-86	80-100	92-115	104-130	116-145	PRESUMPTIVE
18		38-50	52-69	60-80	69-92	78-104	87-116	Mitigated
19		<u>84-105</u>	<u>115-144</u>	<u>134-168</u>	<u>152-190</u>	<u>172-215</u>	<u>192-240</u>	
20		Aggravated						
21	C	<u>67-84</u>	<u>92-115</u>	<u>107-134</u>	<u>122-152</u>	<u>138-172</u>	<u>154-192</u>	PRESUMPTIVE
22		<u>50-67</u>	<u>69-92</u>	<u>80-107</u>	<u>92-122</u>	<u>104-138</u>	<u>116-154</u>	Mitigated
23								
24		A	A	A	A	A	DISPOSITION	
25		55-69	66-82	89-111	101-126	115-144	126-158	Aggravated
26	D	44-55	53-66	71-89	81-101	92-115	101-126	PRESUMPTIVE
27		33-44	40-53	53-71	61-81	69-92	76-101	Mitigated
28		<u>74-93</u>	<u>89-111</u>	<u>118-148</u>	<u>135-169</u>	<u>152-190</u>	<u>168-210</u>	Aggravated
29	D	<u>59-74</u>	<u>71-89</u>	<u>94-118</u>	<u>108-155</u>	<u>122-152</u>	<u>134-168</u>	PRESUMPTIVE
30		<u>44-59</u>	<u>53-71</u>	<u>71-94</u>	<u>81-108</u>	<u>92-122</u>	<u>101-134</u>	Mitigated
31								
32		I/A	I/AA	A	A	A	DISPOSITION	
33		25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
34	E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
35		15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
36								
37		I/A	I/AI/A	A	A	A	DISPOSITION	
38		16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
39	F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
40		10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
41								
42		I/A	I/AI/A	I/A	A	A	DISPOSITION	
43		13-16	15-19	16-20	20-25	21-26	29-36	Aggravated

1	G	10-13	12-15	13-16	16-20	17-21	23-29		PRESUMPTIVE
2		8-10	9-12	10-13	12-16	13-17	17-23	Mitigated	
3									
4		C/I	I	I/A	I/A	I/A	A		DISPOSITION
5		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated	
6	H	5-6	6-8	8-10	9-11	12-15	16-20		PRESUMPTIVE
7		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated	
8									
9			C	C/II	I/A	I/A	I/A		DISPOSITION
10		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated	
11	I	4-6	4-6	5-6	6-8	7-9	8-10		PRESUMPTIVE
12		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated	
13									
14									

15 Sec. 13. This act becomes effective December 1, 1995, and applies to offenses
16 committed on or after that date.