

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 208  
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Short Title: Criminal Tech./Clarifying Amend.

(Public)

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Sponsors: Senators Ballance, Parnell, and Hartsell.

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Referred to: Judiciary II/Election Laws.

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February 15, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE TECHNICAL AND CLARIFYING AMENDMENTS AS  
3 RECOMMENDED BY THE SENTENCING COMMISSION.

4 The General Assembly of North Carolina enacts:

5 PART I. TECHNICAL AMENDMENTS.

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

7 "(e) Punishment. – For a first conviction under subsections (a) or (d), or for a  
8 subsequent conviction for which the punishment is not specified by this subsection, the  
9 defendant ~~may~~shall be guilty of a Class 3 misdemeanor. The term of imprisonment may  
10 be suspended only on condition that the defendant perform community service for a term  
11 of at least 24 hours. For a second offense committed within three years after the date the  
12 defendant was convicted of an offense under this section, the defendant ~~may~~shall be  
13 guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on  
14 condition that the defendant be imprisoned for a term of at least 72 hours as a condition  
15 of special probation, perform community service for a term of at least 72 hours, or both.  
16 For a third or subsequent offense committed within five years after the date the defendant  
17 was convicted of two other offenses under this section, the defendant ~~may~~shall be guilty  
18 of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a  
19 condition of special probation is imposed to require the defendant to serve a term of

1 imprisonment of at least ~~14~~11 days. However, if the sentencing judge finds that the  
2 defendant is unable, by reason of mental or physical infirmity, to perform the service  
3 required under this section, and the reasons for such findings are set forth in the  
4 judgment, ~~he~~the judge may pronounce such other sentence as ~~he~~the judge finds  
5 appropriate."

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

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

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

16 "(c) Punishments for Each Class of Offense and Prior Record Level; Punishment  
17 Chart Described. – The authorized punishment for each class of offense and prior record  
18 level is as specified in the chart below. Prior record levels are indicated by the Roman  
19 numerals placed horizontally on the top of the chart. Classes of offense are indicated by  
20 the letters placed vertically on the left side of the chart. Each cell on the chart contains  
21 the following components:

- 22 (1) A sentence disposition or dispositions: 'C' indicates that a community  
23 punishment is authorized; 'I' indicates that an intermediate punishment  
24 is authorized; 'A' indicates that an active punishment is authorized; and  
25 'Life Imprisonment Without Parole' indicates that the defendant shall be  
26 imprisoned for the remainder of the prisoner's natural life.
- 27 (2) A presumptive range of minimum durations, if the sentence of  
28 imprisonment is neither aggravated or mitigated; any minimum term of  
29 imprisonment in that range is permitted unless the court finds pursuant  
30 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is  
31 appropriate. The presumptive range is the middle of the three ranges in  
32 the cell.
- 33 (3) A mitigated range of minimum durations if the court finds pursuant to  
34 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is  
35 justified; in such a case, any minimum term of imprisonment in the  
36 mitigated range is permitted. The mitigated range is the lower of the  
37 three ranges in the cell.
- 38 (4) An aggravated range of minimum durations if the court finds pursuant  
39 to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is  
40 justified; in such a case, any minimum term of imprisonment in the  
41 aggravated range is permitted. The aggravated range is the higher of the  
42 three ranges in the cell.

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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 <u>Without Parole</u> 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						
	A	A	A	A	A	A	DISPOSITION	
	135-169	163-204		190-238		216-270	243-304	270-338
		Aggravated						
B2	108-135	130-163	152-190	173-216	194-243	216-270	PRESUMPTIVE	
	81-108	98-130	114-152	130-173	146-194	162-216		
		Mitigated						
	A	A	A	A	A	A	DISPOSITION	
	63-79	86-108	100-125	115-144	130-162	145-181	Aggravated	
C	50-63	69-86	80-100	92-115	104-130	116-145	PRESUMPTIVE	
	38-50	52-69	60-80	69-92	78-104	87-116	Mitigated	
	A	A	A	A	A	A	DISPOSITION	
	55-69	66-82	89-111	101-126	115-144	126-158	Aggravated	
D	44-55	53-66	71-89	81-101	92-115	101-126	PRESUMPTIVE	
	33-44	40-53	53-71	61-81	69-92	76-101	Mitigated	
	I/A	I/AA	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/AI/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/AI/A	I/A	A	A	DISPOSITION		

1 13-16 15-19 16-20 20-25 21-26 29-36 Aggravated  
 2 G 10-13 12-15 13-16 16-20 17-21 23-29 PRESUMPTIVE  
 3 8-10 9-12 10-13 12-16 13-17 17-23 Mitigated

4  
 5 C/I I I/A I/A I/A A DISPOSITION  
 6 6-8 8-10 10-12 11-14 15-19 20-25 Aggravated  
 7 H 5-6 6-8 8-10 9-11 12-15 16-20 PRESUMPTIVE  
 8 4-5 4-6 6-8 7-9 9-12 12-16 Mitigated

9  
 10 C C/II I/A I/A I/A DISPOSITION  
 11 6-8 6-8 6-8 8-10 9-11 10-12 Aggravated  
 12 I 4-6 4-6 5-6 6-8 7-9 8-10 PRESUMPTIVE  
 13 3-4 3-4 4-5 4-6 5-7 6-8 Mitigated " Sec. 4. G.S. 15A-1444(e)reads

14 as rewritten:

15 "(e) Except as provided in ~~subsection (a1)~~ subsections (a1) and (a2) of this section  
 16 and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest  
 17 has been denied, the defendant is not entitled to appellate review as a matter of right  
 18 when he has entered a plea of guilty or no contest to a criminal charge in the superior  
 19 court, but he may petition the appellate division for review by writ of certiorari. If an  
 20 indigent defendant petitions the appellate division for a writ of certiorari, the presiding  
 21 superior court judge may in his discretion order the preparation of the record and  
 22 transcript of the proceedings at the expense of the State."

23 Sec. 5. G.S. 20-166.1(k) reads as rewritten:

24 "(k) ~~A~~ Except as provided in subsection (c) of this section, a violation of any  
 25 provision of this section is a Class 2 misdemeanor."

26 Sec. 6. G.S. 113-136(j) read as rewritten:

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

32 PART II. CLARIFYING AMENDMENTS.

33 Sec. 7. G.S. 15A-1340.11(2) reads as rewritten:

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

38 Sec. 8. G.S. 15A-1340.14(b) reads as rewritten:

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

- 40 (1) For each prior felony Class A conviction, 10 points.
- 41 (1a) For each prior felony Class B1 conviction, 9 points.
- 42 (2) For each prior felony Class B2, C, or D conviction, 6 points.
- 43 (3) For each prior felony Class E, F, or G conviction, 4 points.

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

15 For purposes of determining prior record points under this subsection, a conviction for

16 a first degree rape or a first degree sexual offense committed prior to the effective date of

17 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any

18 other felony Class B offense committed prior to the effective date of this subsection shall

19 be treated as a felony Class B2 conviction."

20 Sec. 9. G.S. 15A-1340.21(b) reads as rewritten:

21 "(b) Prior Conviction Levels for Misdemeanor Sentencing. – The prior conviction

22 levels for misdemeanor sentencing are:

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

26 In determining the prior conviction level, a prior offense may be included if it is either a

27 felony or a misdemeanor at the time the offense for which the offender is being sentenced

28 is committed."

29 Sec. 10. G.S. 20-141.3(a) and (b) read as rewritten:

30 "(a) It shall be unlawful for any person to operate a motor vehicle on a street or

31 highway willfully in prearranged speed competition with another motor vehicle. Any

32 person violating the provisions of this subsection shall be guilty of a Class ~~2~~1

33 misdemeanor.

34 (b) It shall be unlawful for any person to operate a motor vehicle on a street or

35 highway willfully in speed competition with another motor vehicle. Any person willfully

36 violating the provisions of this subsection shall be guilty of a Class ~~1~~2 misdemeanor."

37 Sec. 11. G.S. 90-98 reads as rewritten:

38 "**§ 90-98. Attempt and conspiracy; penalties.**

39 ~~Any~~ Except as otherwise provided in this Article, any person who attempts or

40 conspires to commit any offense defined in this Article is punishable by imprisonment or

41 fine or both which may not exceed the maximum punishment prescribed for the offense,

42 the commission of guilty of an offense that is the same class as the offense which was the

43 object of the attempt or conspiracy. If the offense the person attempts or conspires to

1 ~~commit is a felony, the attempt or conspiracy is punishable as a felony of the same class~~  
2 ~~as that offense. conspiracy and is punishable as specified for that class of offense and~~  
3 ~~prior record or conviction level in Article 81B of Chapter 15A of the General Statutes.~~"

4           Sec. 12. This act becomes effective December 1, 1995.