

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 158

Short Title: Commit Offenses in Prison/Up Penalty.

(Public)

Sponsors: Representatives Kiser; Allred, Baddour, Baker, Barbee, Brawley, Brown, Cansler, Capps, Carpenter, Clary, Culp, Davis, Dedmon, Gardner, Grady, Gulley, Hall, Hardy, Howard, Justus, Moore, Morris, Owens, Rayfield, Sexton, Starnes, and Thompson.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED
WHILE IN PRISON.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(e) reads as rewritten:

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

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level;

- 1 (4) If any person commits a Class 2 misdemeanor, and if he has previously
2 been convicted for one or more offenses under any law of North
3 Carolina or any law of the United States or any other state, which
4 offenses are punishable under any provision of this Article, he shall be
5 guilty of a Class 1 misdemeanor. The prior conviction used to raise the
6 current offense to a Class 1 misdemeanor shall not be used to calculate
7 the prior conviction level;
- 8 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
9 selling or delivering a controlled substance to a person under 16 years of
10 age or a pregnant female shall be punished as a Class D felon. Mistake
11 of age is not a defense to a prosecution under this section. It shall not be
12 a defense that the defendant did not know that the recipient was
13 pregnant;
- 14 (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and
15 (e)(4), previous convictions for offenses shall be counted by the number
16 of separate trials at which final convictions were obtained and not by the
17 number of charges at a single trial;
- 18 (7) If any person commits an offense under this Article for which the
19 prescribed punishment requires that any sentence of imprisonment be
20 suspended, and if he has previously been convicted for one or more
21 offenses under any law of North Carolina or any law of the United
22 States or any other state, which offenses are punishable under any
23 provision of this Article, he shall be guilty of a Class 2 misdemeanor;
- 24 (8) Any person 21 years of age or older who commits an offense under G.S.
25 90-95(a)(1) on property used for an elementary or secondary school or
26 within 300 feet of the boundary of real property used for an elementary
27 or secondary school shall be punished as a Class E felon. For purposes
28 of this subdivision, the transfer of less than five grams of marijuana for
29 no remuneration shall not constitute a delivery in violation of G.S. 90-
30 95(a)(1).
- 31 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal
32 institution or local confinement facility shall be guilty of a Class ~~F~~H
33 felony."

34 Section 2. G.S. 148-46.1 reads as rewritten:

35 "**§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in**
36 **incapacity to perform assigned duties.**

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

1 Section 3. This act becomes effective December 1, 1997, and applies to
2 offenses committed on or after that date.