

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 175

Short Title: Struct. Sent./Tech. & Clarifying Amends.

(Public)

Sponsors: Representative Neely.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

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

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 Section 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, under G.S.~~  
12 ~~15A-1340.4(f). sentence.~~ If the defendant is represented by counsel in the discussions the  
13 defendant need not be present. The trial judge may participate in the discussions."

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

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

- 21 (1) A sentence disposition or dispositions: 'C' indicates that a community  
22 punishment is authorized; 'I' indicates that an intermediate punishment  
23 is authorized; 'A' indicates that an active punishment is authorized; and  
24 'Life Imprisonment Without Parole' indicates that the defendant shall be  
25 imprisoned for the remainder of the prisoner's natural life.
- 26 (2) A presumptive range of minimum durations, if the sentence of  
27 imprisonment is neither aggravated or mitigated; any minimum term of  
28 imprisonment in that range is permitted unless the court finds pursuant  
29 to G.S. 15A-1340.16 that an aggravated or mitigated sentence is  
30 appropriate. The presumptive range is the middle of the three ranges in  
31 the cell.
- 32 (3) A mitigated range of minimum durations if the court finds pursuant to  
33 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is  
34 justified; in such a case, any minimum term of imprisonment in the  
35 mitigated range is permitted. The mitigated range is the lower of the  
36 three ranges in the cell.
- 37 (4) An aggravated range of minimum durations if the court finds pursuant  
38 to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is  
39 justified; in such a case, any minimum term of imprisonment in the  
40 aggravated range is permitted. The aggravated range is the higher of the  
41 three ranges in the cell.
- 42  
43

### PRIOR RECORD LEVEL

|    |    |   |         |         |         |          |           |                              |
|----|----|---|---------|---------|---------|----------|-----------|------------------------------|
| 1  |    |   |         |         |         |          |           |                              |
| 2  |    |   |         |         |         |          |           |                              |
| 3  |    | I   | II      | III     | IV      | V        | VI        |                              |
| 4  |    | 0 Pts   | 1-4 Pts | 5-8 Pts |         | 9-14 Pts | 15-18 Pts | 19+ Pts                      |
| 5  |    |   |         |         |         |          |           |                              |
| 6  | A  | Life Imprisonment <u>Without Parole</u> or Death as |         |         |         |          |           |                              |
| 7  |    | Established by Statute                              |         |         |         |          |           |                              |
| 8  |    |   |         |         |         |          |           |                              |
| 9  |    |   |         |         |         |          |           |                              |
| 10 |    | A   | A       | A       | A       | A        | A         | DISPOSITION                  |
| 11 |    | 240-300   | 288-360 |         | 336-420 |          | 384-480   | Life Imprisonment Aggravated |
| 12 |    |   |         |         |         |          |           | Without Parole               |
| 13 | B1 | 192-240   | 230-288 | 269-336 | 307-384 | 346-433  | 384-480   | PRESUMPTIVE                  |
| 14 |    | 144-192   | 173-230 | 202-269 | 230-307 | 260-346  | 288-384   |                              |
| 15 |    | Mitigated   |         |         |         |          |           |                              |
| 16 |    |   |         |         |         |          |           |                              |
| 17 |    |   |         |         |         |          |           |                              |
| 18 |    | A   | A       | A       | A       | A        | A         | DISPOSITION                  |
| 19 |    | 157-196   | 189-237 |         | 220-276 |          | 251-313   | 282-353                      |
| 20 |    | Aggravated  |         |         |         |          |           |                              |
| 21 | B2 | 125-157   | 151-189 | 176-220 | 201-251 | 225-282  | 251-313   | PRESUMPTIVE                  |
| 22 |    | 94-125  | 114-151 | 132-176 | 151-201 | 169-225  | 188-251   |                              |
| 23 |    | Mitigated   |         |         |         |          |           |                              |
| 24 |    |   |         |         |         |          |           |                              |
| 25 |    |   |         |         |         |          |           |                              |
| 26 |    | A   | A       | A       | A       | A        | A         | DISPOSITION                  |
| 27 |    | 73-92   | 100-125 | 116-145 | 133-167 | 151-188  | 168-210   | Aggravated                   |
| 28 | C  | 58-73   | 80-100  | 93-116  | 107-133 | 121-151  | 135-168   | PRESUMPTIVE                  |
| 29 |    | 44-58   | 60-80   | 70-93   | 80-107  | 90-121   | 101-135   | Mitigated                    |
| 30 |    |   |         |         |         |          |           |                              |
| 31 |    |   |         |         |         |          |           |                              |
| 32 |    | A   | A       | A       | A       | A        | A         | DISPOSITION                  |
| 33 |    | 64-80   | 77-95   | 103-129 | 117-146 | 133-167  | 146-183   | Aggravated                   |
| 34 | D  | 51-64   | 61-77   | 82-103  | 94-117  | 107-133  | 117-146   | PRESUMPTIVE                  |
| 35 |    | 38-51   | 46-61   | 61-82   | 71-94   | 80-107   | 88-117    | Mitigated                    |
| 36 |    |   |         |         |         |          |           |                              |
| 37 |    |   |         |         |         |          |           |                              |
| 38 |    | I/A   | I/AA    | A       | A       | A        | A         | DISPOSITION                  |
| 39 |    | 25-31   | 29-36   | 34-42   | 46-58   | 53-66    | 59-74     | Aggravated                   |
| 40 | E  | 20-25   | 23-29   | 27-34   | 37-46   | 42-53    | 47-59     | PRESUMPTIVE                  |
| 41 |    | 15-20   | 17-23   | 20-27   | 28-37   | 32-42    | 35-47     | Mitigated                    |
| 42 |    |   |         |         |         |          |           |                              |
| 43 |    |   |         |         |         |          |           |                              |

|   |   |       |        |       |       |       |             |             |
|---|---|-------|--------|-------|-------|-------|-------------|-------------|
| 1 |   | I/A   | I/AI/A | A     | A     | A     | DISPOSITION |             |
| 2 |   | 16-20 | 19-24  | 21-26 | 25-31 | 34-42 | 39-49       | Aggravated  |
| 3 | F | 13-16 | 15-19  | 17-21 | 20-25 | 27-34 | 31-39       | PRESUMPTIVE |
| 4 |   | 10-13 | 11-15  | 13-17 | 15-20 | 20-27 | 23-31       | Mitigated   |

|    |   |       |        |       |       |       |             |             |
|----|---|-------|--------|-------|-------|-------|-------------|-------------|
| 7  |   | I/A   | I/AI/A | I/A   | A     | A     | DISPOSITION |             |
| 8  |   | 13-16 | 15-19  | 16-20 | 20-25 | 21-26 | 29-36       | Aggravated  |
| 9  | G | 10-13 | 12-15  | 13-16 | 16-20 | 17-21 | 23-29       | PRESUMPTIVE |
| 10 |   | 8-10  | 9-12   | 10-13 | 12-16 | 13-17 | 17-23       | Mitigated   |

|    |   |       |        |       |       |       |             |             |
|----|---|-------|--------|-------|-------|-------|-------------|-------------|
| 13 |   | C/I/A | I/AI/A | I/A   | I/A   | A     | DISPOSITION |             |
| 14 |   | 6-8   | 8-10   | 10-12 | 11-14 | 15-19 | 20-25       | Aggravated  |
| 15 | H | 5-6   | 6-8    | 8-10  | 9-11  | 12-15 | 16-20       | PRESUMPTIVE |
| 16 |   | 4-5   | 4-6    | 6-8   | 7-9   | 9-12  | 12-16       | Mitigated   |

|    |   |     |      |     |      |      |             |             |
|----|---|-----|------|-----|------|------|-------------|-------------|
| 19 |   | C   | C/II | I/A | I/A  | I/A  | DISPOSITION |             |
| 20 |   | 6-8 | 6-8  | 6-8 | 8-10 | 9-11 | 10-12       | Aggravated  |
| 21 | I | 4-6 | 4-6  | 5-6 | 6-8  | 7-9  | 8-10        | PRESUMPTIVE |
| 22 |   | 3-4 | 3-4  | 4-5 | 4-6  | 5-7  | 6-8         | Mitigated   |

23 ".  
24

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

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

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

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

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

41 "(2) Community punishment. – A sentence in a criminal case that does not  
42 include an active ~~punishment or punishment~~, an intermediate ~~punishment~~.

1                   punishment, or any of the conditions of probation listed in subdivision  
2                   (6) of this section."

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

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

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

6           (1a) For each prior felony Class B1 conviction, 9 points.

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

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

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

10          (5) For each prior Class A1 or Class 1 misdemeanor conviction, 1 point,  
11           except that convictions for Class 1 misdemeanor offenses under Chapter  
12           20 of the General Statutes, other than conviction for misdemeanor death  
13           by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for  
14           purposes of determining a person's prior record for felony sentencing.

15          (6) If all the elements of the present offense are included in ~~the~~any prior  
16           ~~offense,~~offense for which the offender was convicted, whether or not  
17           that prior offense is used in determining prior record level, 1 point.

18          (7) If the offense was committed while the offender was on ~~probation or~~  
19           supervised or unsupervised probation, parole, or post-release  
20           supervision, or while the offender was serving a sentence of  
21           imprisonment, or while the offender was on escape from a correctional  
22           institution while serving a sentence of imprisonment, 1 point.

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

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

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

31           (1) Level I – 0 prior convictions.

32           (2) Level II – At least 1, but not more than 4 prior convictions.

33           (3) Level III – At least 5 prior convictions.

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

37           Section 9. 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, the  
42       commission of guilty of an offense that is the same class as the offense which was the  
43       object of the attempt or conspiracy. conspiracy and is punishable as specified for that class

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

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

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

6 **"§ 7A-598. Grounds for order.**

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

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

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

18 **"§ 7A-600. Nontestimonial identification order at request of juvenile.**

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

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

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

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

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

39 **"§ 15A-273. Basis for order.**

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

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

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

10 **"§ 15A-281. Nontestimonial identification order at request of defendant.**

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

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