

NORTH CAROLINA GENERAL ASSEMBLY  
1981 SESSION

CHAPTER 179  
SENATE BILL 72

AN ACT TO AMEND THE FAIR SENTENCING ACT, AS AMENDED IN 1980.

The General Assembly of North Carolina enacts:

**Section 1.** G.S. 15A-1340.4(a) is amended by deleting the third and fourth sentences and the lists of aggravating and mitigating factors, and inserting in lieu thereof the following:

"If the judge imposes a prison term, whether or not the term is suspended, and whether or not he sentences the convicted felon as a committed youthful offender, he must impose the presumptive term provided in this section unless, after consideration of aggravating or mitigating factors, or both, he decides to impose a longer or shorter term, or unless he imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter. In imposing a prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may consider any aggravating and mitigating factors that he finds are proved by the preponderance of the evidence, and that are reasonably related to the purposes of sentencing, whether or not such aggravating or mitigating factors are set forth herein, but unless he imposes the term pursuant to a plea arrangement as to sentence under Article 58 of this Chapter, he must consider each of the following aggravating and mitigating factors:

(1) Aggravating factors:

- a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- c. The offense was committed for hire or pecuniary gain.
- d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.
- f. The offense was especially heinous, atrocious, or cruel.
- g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- i. The defendant was armed with or used a deadly weapon at the time of the crime.
- j. The victim was very young, or very old, or mentally or physically infirm.

- k. The defendant committed the offense while on pretrial release on another felony charge.
- l. The defendant involved a person under the age of 16 in the commission of the crime.
- m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
- n. The defendant took advantage of a position of trust or confidence to commit the offense.
- o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial.

(2) Mitigating factors:

- a. The defendant has no record of criminal convictions or a record consisting solely of misdemeanors punishable by not more than 60 days' imprisonment.
- b. The defendant committed the offense under duress, coercion, threat, or compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
- c. The defendant was a passive participant or played a minor role in the commission of the offense.
- d. The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
- e. The defendant's immaturity or his limited mental capacity at the time of commission of the offense significantly reduced his culpability for the offense.
- f. The defendant has made substantial or full restitution to the victim.
- g. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
- h. The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- i. The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
- j. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
- k. The defendant reasonably believed that his conduct was legal.

- l. Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- m. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
- n. The defendant is a minor and has reliable supervision available."

**Sec. 2.** G.S. 15A-1340.4(b) is rewritten to read as follows:

"If the judge imposes a prison term for a felony that differs from the presumptive term provided in subsection (f), whether or not the term is suspended, and whether or not he sentences the convicted felon as a committed youthful offender, the judge must specifically list in the record each matter in aggravation or mitigation that he finds proved by a preponderance of the evidence. If he imposes a prison term that exceeds the presumptive term, he must find that the factors in aggravation outweigh the factors in mitigation, and if he imposes a prison term that is less than the presumptive term, he must find that the factors in mitigation outweigh the factors in aggravation. However, a judge need not make any findings regarding aggravating and mitigating factors if he imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter, regardless of the length of the term, or if he imposes the presumptive term."

**Sec. 3.** G.S. 15A-1340.4(c), G.S. 15A-1340.4(d) and G.S. 15A-1340.4(g) are repealed.

**Sec. 4.** G.S. 15A-1340.4(e) is rewritten to read as follows:

"(e) A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein. No prior conviction which occurred while the defendant was indigent may be considered in sentencing unless the defendant was represented by counsel or waived counsel with respect to that prior conviction. A defendant may make a motion to suppress evidence of a prior conviction pursuant to Article 53 of this Chapter. If the motion is made for the first time during the sentencing stage of the criminal action, either the State or the defendant is entitled to a continuance of the sentencing hearing."

**Sec. 5.** G.S. 15A-1340.4(f) is rewritten to read as follows: "Unless otherwise specified by statute, presumptive prison terms for felonies classified under G.S. Chapter 14 and any other specific penalty statutes are as follows:

- (1) For a Class C felony, imprisonment for 15 years.
- (2) For a Class D felony, imprisonment for 12 years.
- (3) For a Class E felony, imprisonment for 9 years.
- (4) For a Class F felony, imprisonment for 6 years.
- (5) For a Class G felony, imprisonment for 4 1/2 years.
- (6) For a Class H felony, imprisonment for 3 years.
- (7) For a Class I felony, imprisonment for 2 years.
- (8) For a Class J felony, imprisonment for 1 year."

**Sec. 6.** G.S. 15A-1414(b)(4), as enacted by Chapter 760, Session Laws of 1979, is amended by adding thereto the following sentence:

"This motion must be addressed to the sentencing judge."

**Sec. 7.** G.S. 15A-1415(b)(8) is amended by the addition of the following sentence:

"However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge."

**Sec. 8.** G.S. 15A-1444(e) is amended by deleting the opening words "Except as provided in G.S. 15A-979" and inserting in lieu thereof "Except as provided in subsection (al) of this section and G.S. 15A-979".

**Sec. 9.** G.S. 15A-1444(al), as enacted by Chapter 760, Session Laws of 1979, is rewritten to read as follows:

"A defendant who has been found guilty, or entered a plea of guilty or no contest to a felony, is entitled to appeal as a matter of right the issue of whether his sentence is supported by evidence introduced at the trial and sentencing hearing only if the prison term of the sentence exceeds the presumptive term set by G.S. 15A-1340.4, and if the judge was required to make findings as to aggravating or mitigating factors pursuant to this Article. Otherwise, he is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari."

**Sec. 10.** Section 4 of Chapter 760 of the 1979 Session Laws is amended by deleting the following paragraph:

"Article 2A of Chapter 14 of the General Statutes pertaining to habitual felons, in the 1969 Replacement Volume 1B and the 1977 Cumulative Supplement, is repealed."

**Sec. 11.** G.S. 14-7.2 is amended on the last line after the word "penalty" by inserting the words "or a life sentence".

**Sec. 12.** G.S. 14-7.4 is amended by deleting the last sentence and inserting in lieu thereof the following sentence:

"A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein."

**Sec. 13.** G.S. 14-7.6 is rewritten to read as follows:

**"§ 14-7.6. Sentencing of habitual felons.** — When an habitual felon as defined in this Article shall commit any felony under the laws of the State of North Carolina, he must, upon conviction or plea of guilty under indictment as herein provided (except where the death penalty or a sentence of life imprisonment is imposed) be sentenced as a Class C felon. Notwithstanding any other provision of law, a person sentenced under this Article shall serve a term of not less than seven years in prison, excluding gain time granted under G.S. 148-13. A person sentenced under this Article shall receive a sentence of at least 14 years in the State's prison and shall be entitled to credit for good behavior under G.S. 15A-1340.7. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder."

**Sec. 14.** Chapter 63 of the Session Laws of 1981 (H 275) is amended by deleting the date "April 15, 1981" in each instance where it appears in that act, and inserting in lieu thereof, in each instance, the date "July 1, 1981".

**Sec. 15.** This section and Section 14 of this act are effective on ratification. Sections 1 through 13 of this act shall become effective July 1, 1981, and shall apply to offenses committed on and after that date.

In the General Assembly read three times and ratified, this the 6th day of April, 1981.