

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 8

Short Title: Amend Struc. Sent. Prior Record Calculation. (Public)

Sponsors: Senators Cooper; Albertson, Dalton, Dannelly, Gulley, Hoyle, Jordan, Kerr, Lee, Lucas, Martin of Guilford, Miller, Odom, Plyler, Rand, Reeves, Shaw of Cumberland, Warren, Weinstein, Wellons, and Winner.

Referred to: Judiciary.

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY
ADVISORY COMMISSION'S RECOMMENDATION TO AMEND THE
STRUCTURED SENTENCING PROVISIONS REGARDING THE
CALCULATION OF PRIOR RECORD LEVELS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14(d) reads as rewritten:

"(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, or in a single session of district court, only the conviction for the offense with the highest point total is used. ~~If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.~~ However, if at the time of sentencing for those convictions that court found that the offenses were not transactionally related pursuant to G.S. 15A-1340.15(c) or G.S. 15A-1340.22(c), each conviction is used for purposes of determining the prior record level."

Section 2. G.S. 15A-1340.15 is amended by adding a new subsection to read:

1 "(c) Transactionally Related Convictions. – Unless otherwise specified by the
2 court, if an offender is convicted of more than one offense in a single superior court
3 during one calendar week, or in a single session of district court, those offenses are
4 transactionally related. At the time of conviction, the State may move the court to find
5 that the current offenses are not transactionally related. The State must prove by a
6 preponderance of the evidence that the current offenses are not transactionally related. In
7 determining whether offenses are not transactionally related, the following factors are
8 relevant but not dispositive: whether the offenses were of the same or similar character,
9 based on the same act or transaction, based on two or more acts or transactions connected
10 together or constituting parts of a common scheme or plan, or whether the offenses were
11 committed at a single time or in temporally continuous actions. An offense that threatens
12 or results in bodily injury or death is not transactionally related. For purposes of this
13 subsection, the offenses of first-degree rape (G.S. 14-27.2), second-degree rape (G.S. 14-
14 27.3), first-degree sexual offense (G.S. 14-27.4), second-degree sexual offense (G.S. 14-
15 27.5), and intercourse and sexual offenses with certain victims (G.S. 14-27.7) are deemed
16 to result in bodily injury. The judgment shall contain the finding."

17 Section 3. G.S. 15A-1340.21(d) reads as rewritten:

18 "(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of
19 this section, if an offender is convicted of more than one offense in a single session of
20 district court, or in a single week of superior court or of a court in another jurisdiction,
21 only one of the convictions may be used to determine the prior conviction level.
22 However, if at the time of sentencing for those convictions that court found that the
23 offenses were not transactionally related pursuant to G.S. 15A-1340.15(c) or G.S. 15A-
24 1340.22(c), each conviction is used for purposes of determining the prior conviction
25 level."

26 Section 4. G.S. 15A-1340.22 is amended by adding a new subsection to read:

27 "(c) Transactionally Related Convictions. – Unless otherwise specified by the
28 court, if an offender is convicted of more than one offense in a single session of district
29 court, or in a single week of superior court or of a court in another jurisdiction, those
30 offenses are transactionally related. At the time of conviction, the State may move the
31 court to find that the current offenses are not transactionally related. The State must
32 prove by a preponderance of the evidence that the current offenses are not transactionally
33 related. In determining whether offenses are not transactionally related, the following
34 factors are relevant but not dispositive: whether the offenses were of the same or similar
35 character, based on the same act or transaction, based on two or more acts or transactions
36 connected together or constituting parts of a common scheme or plan, or whether the
37 offenses were committed at a single time or in temporally continuous actions. An offense
38 that threatens or results in bodily injury or death is not transactionally related. For
39 purposes of this subsection, the offenses of first-degree rape (G.S. 14-27.2), second-
40 degree rape (G.S. 14-27.3), first-degree sexual offense (G.S. 14-27.4), second-degree
41 sexual offense (G.S. 14-27.5), and intercourse and sexual offenses with certain victims
42 (G.S. 14-27.7) are deemed to result in bodily injury. The judgment shall contain the
43 finding."

1 Section 5. G.S. 15A-1340.14 is amended by adding a new subsection to read:
2 "(a1) Conviction-Free Period. – If, within the 10 years immediately preceding the
3 date of the commission of the current offense, an offender:

- 4 (1) Has not been convicted of any felony, and
5 (2) Has not been convicted of any misdemeanor as that term is defined in
6 this subsection, and
7 (3) Has not been incarcerated as a result of a conviction of any felony or
8 misdemeanor,
9 then prior Class H and I felony convictions and Class A1 and 1 misdemeanor convictions
10 are not assigned points. For purposes of this subsection, misdemeanor is defined as any
11 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a
12 commercial vehicle (G.S. 20-138.2), misdemeanor death by vehicle (G.S. 20-141.4(a2)),
13 and driving while license revoked (G.S. 20-28(a)), but not any other misdemeanor traffic
14 offense under Chapter 20 of the General Statutes."

15 Section 6. G.S. 15A-1340.21 is amended by adding a new subsection to read:
16 "(a1) Conviction-Free Period. – If, within the 10 years immediately preceding the
17 date of the commission of the current offense, an offender:

- 18 (1) Has not been convicted of any felony, and
19 (2) Has not been convicted of any misdemeanor as that term is defined in
20 this subsection, and
21 (3) Has not been incarcerated as a result of a conviction of any felony or
22 misdemeanor,
23 then prior Class H and I felony convictions and misdemeanor convictions are not
24 counted. For purposes of this subsection, misdemeanor is defined as any nontraffic
25 misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a
26 commercial vehicle (G.S. 20-138.2), misdemeanor death by vehicle (G.S. 20-141.4(a2)),
27 and driving while license revoked (G.S. 20-28(a)), but not any other misdemeanor traffic
28 offense under Chapter 20 of the General Statutes."

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

- 30 "(b) Points. – Points are assigned as follows:
31 (1) For each prior felony Class A conviction, 10 points.
32 (1a) For each prior felony Class B1 conviction, 9 points.
33 (2) For each prior felony Class B2, C, or D conviction, 6 points.
34 (3) For each prior felony Class E, F, or G conviction, 4 points.
35 (4) For each prior felony Class H or I conviction, 2 points.
36 (5) For each prior ~~Class A1 or Class 1~~ misdemeanor conviction, ~~conviction~~
37 as defined in this subsection, 1 point, ~~except that convictions for Class 1~~
38 ~~misdemeanor offenses under Chapter 20 of the General Statutes, other~~
39 ~~than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)),~~
40 ~~shall not be assigned any points for purposes of determining a person's~~
41 ~~prior record for felony sentencing. point. For purposes of this~~
42 subsection, misdemeanor is defined as any Class A1 and Class 1
43 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1),

1 impaired driving in a commercial vehicle (G.S. 20-138.2), and
2 misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other
3 misdemeanor traffic offense under Chapter 20 of the General Statutes.

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

6 (7) If the offense was committed while the offender was on probation or
7 parole, or while the offender was serving a sentence of imprisonment, or
8 while the offender was on escape from a correctional institution while
9 serving a sentence of imprisonment, 1 point.

10 For purposes of determining prior record points under this subsection, a conviction for
11 a first degree rape or a first degree sexual offense committed prior to the effective date of
12 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any
13 other felony Class B offense committed prior to the effective date of this subsection shall
14 be treated as a felony Class B2 conviction."

15 Section 8. This act becomes effective December 1, 1997, and applies to
16 offenses committed on or after that date.