

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

S

3

SENATE BILL 684  
Judiciary I Committee Substitute Adopted 6/2/11  
House Committee Substitute Favorable 6/15/11

Short Title: Sex Offender Supervision/Forensic Amendments.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND AMEND THE LAW PROVIDING FOR A FIVE-YEAR PERIOD OF POST-RELEASE SUPERVISION FOR SEX OFFENDERS BY INCREASING THE MAXIMUM SENTENCE FOR SEX OFFENDERS AND PROVIDING FOR THEIR RELEASE ON POST-RELEASE SUPERVISION WITH FIVE YEARS REMAINING ON THEIR SENTENCES AND TO PROVIDE THAT WILLFUL REFUSAL TO ACCEPT OR COMPLY WITH THE TERMS OF POST-RELEASE SUPERVISION IS PUNISHABLE AS CONTEMPT OF COURT, AND TO AMEND THE FORENSIC SCIENCES ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1340.17 is amended by adding a new subsection to read:

"(f) Maximum Sentences Specified for Class B1 Through Class E Sex Offenses. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for offenders sentenced for a Class B1 through E felony that is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus 60 additional months."

**SECTION 2.** G.S. 15A-1368.2(a) reads as rewritten:

"(a) A Except as otherwise provided in this subsection, a prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less nine months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). A prisoner whose maximum sentence is established pursuant to G.S. 15A-1340.17(f) shall be released from prison for post-release supervision on the date equivalent to his or her maximum imposed prison term less 60 months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months."

**SECTION 3.** G.S. 15A-1354(b) reads as rewritten:

"(b) Effect of Consecutive Terms. – In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Department of Correction must treat the defendant as though he has been committed for a single term with the following incidents:



- 1 (1) The maximum prison sentence consists of the total of the maximum terms of  
2 the consecutive sentences, less nine months for each of the second and  
3 subsequent sentences imposed for Class B through Class E ~~felonies;~~  
4 felonies, or less 60 months for each second or subsequent Class B1 through  
5 E felony for which the sentence was established pursuant to  
6 G.S. 15A-1340.17(f); and
- 7 (2) The minimum term consists of the total of the minimum terms of the  
8 consecutive sentences."

9 **SECTION 4.** G.S. 15A-1368(a)(5) reads as rewritten:

- 10 "(5) Maximum imposed term. – The maximum term of imprisonment imposed on  
11 an individual prisoner by a court judgment, as described in  
12 G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms,  
13 the maximum imposed term, for purposes of this Article, is the sum of all  
14 maximum terms imposed in the court judgment or judgments, less nine  
15 months for each of the second and subsequent sentences imposed for Class B  
16 through Class E ~~felonies.~~ felonies, or less 60 months for each second or  
17 subsequent Class B1 through E felony for which the sentence was  
18 established pursuant to G.S. 15A-1340.17(f)."

19 **SECTION 5.** G.S. 15A-1368.2(b) reads as rewritten:

20 "(b) A prisoner shall not refuse post-release supervision. Willful refusal to accept  
21 post-release supervision or to comply with the terms of post-release supervision by a prisoner  
22 whose offense requiring post-release supervision is a reportable conviction subject to the  
23 registration requirement of Article 27A of Chapter 14 of the General Statutes, is punishable as  
24 contempt of court under G.S. 5A-11 and may result in imprisonment under G.S. 5A-12.  
25 Furthermore, any period of time during which a prisoner whose offense requiring post-release  
26 supervision is a reportable conviction subject to the registration requirement of Article 27A of  
27 Chapter 14 of the General Statutes is not in fact released pursuant to subsection (a) of this  
28 section due to the prisoner's resistance to that release shall toll the running of the period of  
29 supervised release imposed by subsection (c) of this section. For purposes of this subsection  
30 and the provisions of G.S. 5A-11, "willful refusal to accept post-release supervision or to  
31 comply with the terms of post-release supervision" includes, but is not limited to, knowingly  
32 violating the terms of post-release supervision in order to be returned to prison to serve out the  
33 remainder of the prisoner's sentence. Notwithstanding any other provision of law, a prisoner  
34 punished for the offense of contempt of court under this subsection is not eligible for credit for  
35 time served against the sentence for which the prisoner is subject to post-release supervision.  
36 Punishment by contempt for willful refusal to accept post-release supervision or to comply with  
37 the terms of post-release supervision does not preclude the application of any other sanction  
38 provided by law for the same conduct."

39 **SECTION 6.** G.S. 5A-11(a) reads as rewritten:

40 "(a) Except as provided in subsection (b), each of the following is criminal contempt:

- 41 (1) Willful behavior committed during the sitting of a court and directly tending  
42 to interrupt its proceedings.
- 43 (2) Willful behavior committed during the sitting of a court in its immediate  
44 view and presence and directly tending to impair the respect due its  
45 authority.
- 46 (3) Willful disobedience of, resistance to, or interference with a court's lawful  
47 process, order, directive, or instruction or its execution.
- 48 (4) Willful refusal to be sworn or affirmed as a witness, or, when so sworn or  
49 affirmed, willful refusal to answer any legal and proper question when the  
50 refusal is not legally justified.

- 1 (5) Willful publication of a report of the proceedings in a court that is grossly  
2 inaccurate and presents a clear and present danger of imminent and serious  
3 threat to the administration of justice, made with knowledge that it was false  
4 or with reckless disregard of whether it was false. No person, however, may  
5 be punished for publishing a truthful report of proceedings in a court.
- 6 (6) Willful or grossly negligent failure by an officer of the court to perform his  
7 duties in an official transaction.
- 8 (7) Willful or grossly negligent failure to comply with schedules and practices  
9 of the court resulting in substantial interference with the business of the  
10 court.
- 11 (8) Willful refusal to testify or produce other information upon the order of a  
12 judge acting pursuant to Article 61 of Chapter 15A, Granting of Immunity to  
13 Witnesses.
- 14 (9) Willful communication with a juror in an improper attempt to influence his  
15 deliberations.
- 16 (9a) Willful refusal by a defendant to comply with a condition of probation.
- 17 (9b) Willful refusal to accept post-release supervision or to comply with the  
18 terms of post-release supervision by a prisoner whose offense requiring  
19 post-release supervision is a reportable conviction subject to the registration  
20 requirement of Article 27A of Chapter 14 of the General Statutes. For  
21 purposes of this subdivision, "willful refusal to accept post-release  
22 supervision or to comply with the terms of post-release supervision"  
23 includes, but is not limited to, knowingly violating the terms of post-release  
24 supervision in order to be returned to prison to serve out the remainder of the  
25 supervisee's sentence.
- 26 (10) Any other act or omission specified elsewhere in the General Statutes of  
27 North Carolina as grounds for criminal contempt.

28 The grounds for criminal contempt specified here are exclusive, regardless of any other  
29 grounds for criminal contempt which existed at common law."

30 **SECTION 7.** G.S. 143B-266(a) reads as rewritten:

31 "(a) There is hereby created a Post-Release Supervision and Parole Commission of the  
32 Department of Correction with the authority to grant paroles, including both regular and  
33 temporary paroles, to persons held by virtue of any final order or judgment of any court of this  
34 State as provided in Chapter 148 of the General Statutes and laws of the State of North  
35 Carolina, except that persons sentenced under Article 81B of Chapter 15A of the General  
36 Statutes are not eligible for parole but may be conditionally released into the custody and  
37 control of United States Immigration and Customs Enforcement pursuant to G.S. 148-64.1. The  
38 Commission shall also have authority to revoke, terminate, and suspend paroles of such persons  
39 (including persons placed on parole on or before the effective date of the Executive  
40 Organization Act of 1973) and to assist the Governor in exercising his authority in granting  
41 reprieves, commutations, and pardons, and shall perform such other services as may be  
42 required by the Governor in exercising his powers of executive clemency. The Commission  
43 shall also have authority to revoke and terminate persons on post-release supervision, as  
44 provided in Article 84A of Chapter 15A of the General Statutes. The Commission shall also  
45 have the authority to punish for criminal contempt for willful refusal to accept post-release  
46 supervision or to comply with the terms of post-release supervision by a prisoner whose offense  
47 requiring post-release supervision is a reportable conviction subject to the registration  
48 requirement of Article 27A of Chapter 14 of the General Statutes. Any contempt proceeding  
49 conducted by the Commission shall be in accordance with G.S. 5A-15 as if the Commission  
50 were a judicial official."

51 **SECTION 8.** Section 4 of S.L. 2011-19 reads as rewritten:

1 "SECTION 4. Forensic science professionals at the State Crime Laboratory shall be  
2 required to obtain individual certification consistent with international and ISO standards as  
3 ~~soon as practicable, but no later than June 1, 2012, within 18 months of the date the analyst~~  
4 ~~becomes eligible to seek certification according to the standards of the certifying entity or by~~  
5 June 1, 2012, whichever occurs later, unless no certification is available. All such forensic  
6 science professionals shall have access to the certification process."

7 SECTION 9. Section 11 of S.L. 2011-19 reads as rewritten:

8 "SECTION 11. Sections 1 through 5 and ~~7~~Sections 9 through 11 are effective when this act  
9 becomes law, and Section 6 becomes effective July 1, 2011. Sections 7 and 8 of this act are  
10 effective when they become law, however, until October 1, 2012, the provisions of those  
11 sections shall apply only to the North Carolina State Crime Laboratory, and on or after October  
12 1, 2012, the provisions of Sections 7 and 8 shall apply to all laboratories conducting forensic or  
13 chemical analysis for admission in the courts of this State. Nothing in this act is intended to  
14 amend or modify either the statutory or common law applicable to discovery in criminal cases  
15 which was applicable prior to the effective date of this act. Prosecutions for offenses committed  
16 before the effective date of this act are not abated or affected by this act, and the statutes that  
17 would be applicable but for this act remain applicable to those prosecutions."

18 SECTION 10. Sections 5, 6, and 7 of this act are effective when they become law  
19 and apply to willful refusals to accept post-release supervision or to comply with the terms of  
20 post-release supervision that occur on or after that date. Sections 8, 9, and 10 of this act are  
21 effective when they become law. The remainder of this act becomes effective December 1,  
22 2011, and applies to offenses committed on or after that date.