

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 364

Short Title: 1997 Child Protection Act.

(Public)

Sponsors: Senators Page; Allran, Ballantine, Blust, Carpenter, Carrington, Clark, Cochrane, East, Forrester, Foxx, Garwood, Kincaid, Ledbetter, McDaniel, Rucho, Shaw of Guilford, and Webster.

Referred to: Judiciary.

March 11, 1997

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT PERSONS CONVICTED OF CERTAIN CRIMES
2 REGARDING MINORS BE SENTENCED TO AN ACTIVE PUNISHMENT OF
3 IMPRISONMENT AND TO AMEND THE LAW REGARDING PRIOR
4 CONVICTIONS AND THEIR EFFECT ON THE PRIOR RECORD LEVEL FOR
5 FELONY SENTENCING.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 14-190.6 reads as rewritten:

9 **"§ 14-190.6. Employing or permitting minor to assist in offense under Article.**

10 Every person 18 years of age or older who intentionally, in any manner, hires,
11 employs, uses or permits any minor under the age of 16 years to do or assist in doing any
12 act or thing constituting an offense under this Article and involving any material, act or
13 thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-
14 190.1, shall be guilty of a Class I felony. Notwithstanding the disposition under G.S.
15 15A-1340.17, the court shall impose an active punishment on any person convicted under
16 this section."

17 Section 2. G.S. 14-190.7 reads as rewritten:

18 **"§ 14-190.7. Dissemination to minors under the age of 16 years.**

1 Every person 18 years of age or older who knowingly disseminates to any minor
2 under the age of 16 years any material which he knows or reasonably should know to be
3 obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class I felony.
4 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
5 active punishment on any person convicted under this section."

6 Section 3. G.S. 14-190.8 reads as rewritten:

7 "**§ 14-190.8. Dissemination to minors under the age of 13 years.**

8 Every person 18 years of age or older who knowingly disseminates to any minor
9 under the age of 13 years any material which he knows or reasonably should know to be
10 obscene within the meaning of G.S. 14-190.1 shall be punished as a Class I felon.
11 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
12 active punishment on any person convicted under this section."

13 Section 4. G.S. 14-190.15(d) reads as rewritten:

14 "(d) Punishment. – Violation of this section is a Class 1 misdemeanor.
15 Notwithstanding the disposition under G.S. 15A-1340.23, the court shall impose an
16 active punishment on any person convicted under this section."

17 Section 5. G.S. 14-190.16(d) reads as rewritten:

18 "(d) Punishment and Sentencing. – Violation of this section is a Class E felony.
19 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
20 active punishment on any person convicted under this section."

21 Section 6. G.S. 14-190.17(d) reads as rewritten:

22 "(d) Punishment and Sentencing. – Violation of this section is a Class F felony.
23 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
24 active punishment on any person convicted under this section."

25 Section 7. G.S. 14-190.17A(d) reads as rewritten:

26 "(d) Punishment and Sentencing. – Violation of this section is a Class I felony.
27 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
28 active punishment on any person convicted under this section."

29 Section 8. G.S. 14-190.18(c) reads as rewritten:

30 "(c) Punishment and Sentencing. – Violation of this section is a Class F felony.
31 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
32 active punishment on any person convicted under this section."

33 Section 9. G.S. 14-190.19(c) reads as rewritten:

34 "(c) Punishment and Sentencing. – Violation of this section is a Class F felony.
35 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
36 active punishment on any person convicted under this section."

37 Section 10. G.S. 14-202.1(b) reads as rewritten:

38 "(b) Taking indecent liberties with children is punishable as a Class F felony.
39 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
40 active punishment on any person convicted under this section."

41 Section 11. G.S. 14-401.11(b) reads as rewritten:

42 "(b) ~~Penalties.~~ Penalties and Sentencing.

43 (1) Any person violating the provisions of G.S. 14-401.11(a)(1):

- 1 a. Where the actual or possible effect on a person eating the food or
2 substance was or would be limited to mild physical discomfort
3 without any lasting effect, shall be guilty of a Class I felony.
4 Notwithstanding the disposition under G.S. 15A-1340.17, the
5 court shall impose an active punishment on any person convicted
6 under this section.
- 7 b. Where the actual or possible effect on a person eating the food or
8 substance was or would be greater than mild physical discomfort
9 without any lasting effect, shall be punished as a Class H felon.
10 Notwithstanding the disposition under G.S. 15A-1340.17, the
11 court shall impose an active punishment on any person convicted
12 under this section.

13 (2) Any person violating the provisions of G.S. 14-401.11(a)(2) shall be
14 punished as a Class F felon. Notwithstanding the disposition under G.S.
15 15A-1340.17, the court shall impose an active punishment on any
16 person convicted under this section.

17 (3) Any person violating the provisions of G.S. 14-401.11(a)(3) shall be
18 punished as a Class C felon. Notwithstanding the disposition under
19 G.S. 15A-1340.17, the court shall impose an active punishment on any
20 person convicted under this section."

21 Section 12. G.S. 14-318.2(a) reads as rewritten:

22 "(a) Any parent of a child less than 16 years of age, or any other person providing
23 care to or supervision of such child, who inflicts physical injury, or who allows physical
24 injury to be inflicted, or who creates or allows to be created a substantial risk of physical
25 injury, upon or to such child by other than accidental means is guilty of the Class 1
26 misdemeanor of child abuse. Notwithstanding the disposition under G.S. 15A-1340.23,
27 the court shall impose an active punishment on any person convicted under this section."

28 Section 13. G.S. 14-318.4 reads as rewritten:

29 **"§ 14-318.4. Child abuse a felony.**

30 (a) A parent or any other person providing care to or supervision of a child less
31 than 16 years of age who intentionally inflicts any serious physical injury upon or to the
32 child or who intentionally commits an assault upon the child which results in any serious
33 physical injury to the child is guilty of a Class E felony. Notwithstanding the disposition
34 under G.S. 15A-1340.17, the court shall impose an active punishment on any person
35 convicted under this section.

36 (a1) Any parent of a child less than 16 years of age, or any other person providing
37 care to or supervision of the child, who commits, permits, or encourages any act of
38 prostitution with or by the juvenile is guilty of child abuse and shall be punished as a
39 Class E felon. Notwithstanding the disposition under G.S. 15A-1340.17, the court shall
40 impose an active punishment on any person convicted under this section.

41 (a2) Any parent or legal guardian of a child less than 16 years of age who commits
42 or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

1 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall impose an
2 active punishment on any person convicted under this section.

3 (b) The felony of child abuse is an offense additional to other civil and criminal
4 provisions and is not intended to repeal or preclude any other sanctions or remedies."

5 Section 14. G.S. 90-95(e) reads as rewritten:

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

9 (1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

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

17 (4) If any person commits a Class 2 misdemeanor, and if he has previously
18 been convicted for one or more offenses under any law of North
19 Carolina or any law of the United States or any other state, which
20 offenses are punishable under any provision of this Article, he shall be
21 guilty of a Class 1 misdemeanor. The prior conviction used to raise the
22 current offense to a Class 1 misdemeanor shall not be used to calculate
23 the prior conviction level;

24 (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by
25 selling or delivering a controlled substance to a person under 16 years of
26 age or a pregnant female shall be punished as a Class D felon.
27 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall
28 impose an active punishment on any person convicted under this
29 Article. Mistake of age is not a defense to a prosecution under this
30 section. It shall not be a defense that the defendant did not know that the
31 recipient was pregnant;

32 (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and
33 (e)(4), previous convictions for offenses shall be counted by the number
34 of separate trials at which final convictions were obtained and not by the
35 number of charges at a single trial;

36 (7) If any person commits an offense under this Article for which the
37 prescribed punishment requires that any sentence of imprisonment be
38 suspended, and if he has previously been convicted for one or more
39 offenses under any law of North Carolina or any law of the United
40 States or any other state, which offenses are punishable under any
41 provision of this Article, he shall be guilty of a Class 2 misdemeanor;

42 (8) Any person 21 years of age or older who commits an offense under G.S.
43 90-95(a)(1) on property used for an elementary or secondary school or

1 within 300 feet of the boundary of real property used for an elementary
2 or secondary school shall be punished as a Class E felon.
3 Notwithstanding the disposition under G.S. 15A-1340.17, the court shall
4 impose an active punishment on any person convicted under this
5 section. For purposes of this subdivision, the transfer of less than five
6 grams of marijuana for no remuneration shall not constitute a delivery in
7 violation of G.S. 90-95(a)(1).

- 8 (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal
9 institution or local confinement facility shall be guilty of a Class I
10 felony."

11 Section 15. G.S. 90-113.23(c) reads as rewritten:

12 "(c) Violation of this section is a Class 1 misdemeanor. However, delivery of drug
13 paraphernalia by a person over 18 years of age to someone under 18 years of age who is
14 at least three years younger than the defendant shall be punishable as a Class I ~~felony.~~
15 felony; and notwithstanding the disposition under G.S. 15A-1340.17, the court shall
16 impose an active punishment on any person convicted of that offense."

17 Section 16. G.S. 15A-1340.14 reads as rewritten:

18 "**§ 15A-1340.14. Prior record level for felony sentencing.**

19 (a) Generally. – The prior record level of a felony offender is determined by
20 calculating the sum of the points assigned to each of the offender's prior convictions that
21 the court finds to have been proved in accordance with this section.

22 (b) Points. – Points are assigned as follows:

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

24 (1a) For each prior felony Class B1 conviction, 9 points.

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

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

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

28 (5) For each prior Class A1 or Class 1 misdemeanor conviction, 1 point,
29 except that convictions for Class 1 misdemeanor offenses under Chapter
30 20 of the General Statutes, other than conviction for misdemeanor death
31 by vehicle (G.S. 20-141.4(a2)), shall not be assigned any points for
32 purposes of determining a person's prior record for felony sentencing.

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

35 (7) If the offense was committed while the offender was on probation or
36 parole, or while the offender was serving a sentence of imprisonment, or
37 while the offender was on escape from a correctional institution while
38 serving a sentence of imprisonment, ~~1 point.~~ 3 points.

39 For purposes of determining prior record points under this subsection, a conviction for
40 a first degree rape or a first degree sexual offense committed prior to the effective date of
41 this subsection shall be treated as a felony Class B1 conviction, and a conviction for any
42 other felony Class B offense committed prior to the effective date of this subsection shall
43 be treated as a felony Class B2 conviction.

1 (c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony
2 sentencing are:

- 3 (1) Level I – 0 points.
- 4 (2) Level II – At least 1, but not more than 4 points.
- 5 (3) Level III – At least 5, but not more than 8 points.
- 6 (4) Level IV – At least 9, but not more than 14 points.
- 7 (5) Level V – At least 15, but not more than 18 points.
- 8 (6) Level VI – At least 19 points.

9 In determining the prior record level, the classification of a prior offense is the
10 classification assigned to that offense at the time the offense for which the offender is
11 being sentenced is committed.

12 (d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of
13 determining the prior record level, if an offender is convicted of more than one offense in
14 a single superior court during one calendar week, ~~only the conviction for the offense with the~~
15 ~~highest point total is used.~~ each conviction is used. If an offender is convicted of more than
16 one offense in a single session of district court, ~~only one of the convictions~~ each conviction
17 is used.

18 (e) Classification of Prior Convictions From Other Jurisdictions. – Except as
19 otherwise provided in this subsection, a conviction occurring in a jurisdiction other than
20 North Carolina is classified as a Class I felony if the jurisdiction in which the offense
21 occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the
22 jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the
23 offender proves by the preponderance of the evidence that an offense classified as a
24 felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor
25 in North Carolina, the conviction is treated as that class of misdemeanor for assigning
26 prior record level points. If the State proves by the preponderance of the evidence that an
27 offense classified as either a misdemeanor or a felony in the other jurisdiction is
28 substantially similar to an offense in North Carolina that is classified as a Class I felony
29 or higher, the conviction is treated as that class of felony for assigning prior record level
30 points. If the State proves by the preponderance of the evidence that an offense classified
31 as a misdemeanor in the other jurisdiction is substantially similar to an offense classified
32 as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a
33 Class A1 or Class 1 misdemeanor for assigning prior record level points.

34 (f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the
35 following methods:

- 36 (1) Stipulation of the parties.
- 37 (2) An original or copy of the court record of the prior conviction.
- 38 (3) A copy of records maintained by the Division of Criminal Information,
39 the Division of Motor Vehicles, or of the Administrative Office of the
40 Courts.
- 41 (4) Any other method found by the court to be reliable.

42 The State bears the burden of proving, by a preponderance of the evidence, that a
43 prior conviction exists and that the offender before the court is the same person as the

1 offender named in the prior conviction. The original or a copy of the court records or a
2 copy of the records maintained by the Division of Criminal Information, the Division of
3 Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as
4 that by which the offender is charged, is prima facie evidence that the offender named is
5 the same person as the offender before the court, and that the facts set out in the record
6 are true. For purposes of this subsection, 'a copy' includes a paper writing containing a
7 reproduction of a record maintained electronically on a computer or other data processing
8 equipment, and a document produced by a facsimile machine. The prosecutor shall make
9 all feasible efforts to obtain and present to the court the offender's full record. Evidence
10 presented by either party at trial may be utilized to prove prior convictions. Suppression
11 of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that
12 section during the sentencing stage of the criminal action, the court may grant a
13 continuance of the sentencing hearing. If asked by the defendant in compliance with G.S.
14 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the
15 defendant within a reasonable time sufficient to allow the defendant to determine if the
16 record available to the prosecutor is accurate."

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