

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 207*
PROPOSED COMMITTEE SUBSTITUTE S207-PCS35279-SA-57

Short Title: Aggravating Factor/Violent Act Before Minor.

(Public)

Sponsors:

Referred to:

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE IT AN AGGRAVATING FACTOR TO COMMIT A VIOLENT FELONY THAT A DEFENDANT REASONABLY SHOULD KNOW IS BEING WITNESSED BY A CHILD WHO IS LESS THAN SIXTEEN YEARS OLD, TO PROVIDE THAT THE INCREASED PENALTY FOR A MISDEMEANOR ASSAULT COMMITTED IN THE PRESENCE OF A MINOR MAY BE IMPOSED WHEN THE MINOR WAS IN A POSITION TO SEE OR HEAR THE COMMISSION OF THE MISDEMEANOR OFFENSE, AND TO PROVIDE THAT A JUDGE SHALL DETERMINE THE CONDITIONS OF PRETRIAL RELEASE FOR A DEFENDANT CHARGED WITH A DOMESTIC VIOLENCE OFFENSE WHEN THE DEFENDANT IS OR HAS BEEN IN A DATING RELATIONSHIP WITH THE VICTIM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(13a) The defendant committed a violent offense and knew or reasonably should have known that a person under the age of 16 who was not involved in the commission of the offense was in a position to see or hear the offense."

SECTION 2. G.S. 14-33(d) reads as rewritten:

"(d) Any person who, in the course of an assault, assault and battery, or affray, inflicts serious injury upon another person, or uses a deadly weapon, in violation of subdivision (c)(1) of this section, on a person with whom the person has a personal relationship, and in the presence of a minor, is guilty of a Class A1 misdemeanor. A person convicted under this subsection, who is sentenced to a community punishment, shall be placed on supervised probation in addition to any other punishment imposed by the court.

A person committing a second or subsequent violation of this subsection shall be sentenced to an active punishment of no less than 30 days in addition to any other punishment imposed by the court.

The following definitions apply to this subsection:

- (1) "Personal relationship" is as defined in G.S. 50B-1(b).
- (2) "In the presence of a minor" means that the minor was in a position to ~~have observed~~ see or hear the assault.
- (3) "Minor" is any person under the age of 18 years who is residing with or is under the care and supervision of, and who has a personal relationship with, the person assaulted or the person committing the assault."

SECTION 3. G.S. 15A-534.1(a) reads as rewritten:



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1 "(a) In all cases in which the defendant is charged with assault on, stalking,
2 communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of
3 Chapter 14 of the General Statutes upon a spouse or former ~~spouse or spouse~~, a person with
4 whom the defendant lives or has lived as if married, or a person with whom the defendant is or
5 has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal
6 trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of
7 the General Statutes, the judicial official who determines the conditions of pretrial release shall
8 be a judge. The judge shall direct a law enforcement officer or a district attorney to provide a
9 criminal history report for the defendant and shall consider the criminal history when setting
10 conditions of release. After setting conditions of release, the judge shall return the report to the
11 providing agency or department. No judge shall unreasonably delay the determination of
12 conditions of pretrial release for the purpose of reviewing the defendant's criminal history
13 report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

- 14 (1) Upon a determination by the judge that the immediate release of the
15 defendant will pose a danger of injury to the alleged victim or to any other
16 person or is likely to result in intimidation of the alleged victim and upon a
17 determination that the execution of an appearance bond as required by
18 G.S. 15A-534 will not reasonably assure that such injury or intimidation will
19 not occur, a judge may retain the defendant in custody for a reasonable
20 period of time while determining the conditions of pretrial release.
- 21 (2) A judge may impose the following conditions on pretrial release:
- 22 a. That the defendant stay away from the home, school, business or
23 place of employment of the alleged victim.
- 24 b. That the defendant refrain from assaulting, beating, molesting, or
25 wounding the alleged victim.
- 26 c. That the defendant refrain from removing, damaging or injuring
27 specifically identified property.
- 28 d. That the defendant may visit his or her child or children at times and
29 places provided by the terms of any existing order entered by a
30 judge.
- 31 e. That the defendant abstain from alcohol consumption, as verified by
32 the use of a continuous alcohol monitoring system, of a type
33 approved by the Division of Adult Correction of the Department of
34 Public Safety, and that any violation of this condition be reported by
35 the monitoring provider to the district attorney.
- 36 The conditions set forth above may be imposed in addition to requiring that
37 the defendant execute a secured appearance bond.
- 38 (3) Should the defendant be mentally ill and dangerous to himself or others or a
39 substance abuser and dangerous to himself or others, the provisions of
40 Article 5 of Chapter 122C of the General Statutes shall apply."

41 **SECTION 4.** This act becomes effective December 1, 2015, and applies to
42 offenses committed on or after that date.