

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

FILED SENATE  
Apr 1, 2019  
S.B. 442  
PRINCIPAL CLERK

S

D

SENATE BILL DRS35201-ML-58A\*

Short Title: Drug Trafficking/Judicial Discretion & Study. (Public)

Sponsors: Senator J. Davis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE JUDICIAL DISCRETION IN SENTENCING FOR DRUG  
3 TRAFFICKING OFFENSES AND TO REQUIRE THE NORTH CAROLINA  
4 SENTENCING AND POLICY ADVISORY COMMISSION TO STUDY THE  
5 ADVISABILITY OF REDUCING SENTENCES FOR DRUG TRAFFICKING  
6 CONVICTIONS.

7 The General Assembly of North Carolina enacts:

8  
9 **PART I. INCREASE JUDICIAL DISCRETION IN SENTENCING FOR DRUG**  
10 **TRAFFICKING OFFENSES**

11 **SECTION 1.(a)** G.S. 90-95(h) reads as rewritten:

12 "(h) Notwithstanding any other provision of law, the following provisions apply except as  
13 otherwise provided in this Article.

14 ...

15 (5) Except as provided in this ~~subdivision~~, subdivision and subdivision (5a), a  
16 person being sentenced under this subsection may not receive a suspended  
17 sentence or be placed on probation. The sentencing judge may reduce the fine,  
18 or impose a prison term less than the applicable minimum prison term  
19 provided by this subsection, or suspend the prison term imposed and place a  
20 person on probation when ~~such person has, to the best of his knowledge, the~~  
21 person has provided substantial assistance in the identification, arrest, or  
22 conviction of any accomplices, accessories, co-conspirators, or principals if  
23 the sentencing judge enters in the record a finding that the person to be  
24 sentenced has rendered such substantial assistance.

25 (5a) The sentencing judge may reduce the fine, or impose a prison term less than  
26 the applicable minimum prison term provided by this subsection, or suspend  
27 the prison term imposed and place a person on probation if the sentencing  
28 judge enters in the record all of the following findings:

29 (a) The defendant was suffering from an addiction to a controlled  
30 substance that was insufficient to constitute a defense but significantly  
31 reduced the defendant's culpability.

32 (b) The defendant has accepted responsibility for the defendant's criminal  
33 conduct.

34 (c) The defendant has completed a substance abuse assessment as  
35 provided in G.S. 122C-142.1.



\* D R S 3 5 2 0 1 - M L - 5 8 A \*

1           (d) The defendant has a good treatment prognosis, and a workable  
2           treatment plan is available.

3           The defendant bears the burden of proving by a preponderance of the  
4           evidence that the required factors exist. Notwithstanding G.S. 15A-1351(a),  
5           the judge may order that a term of imprisonment imposed as a condition of  
6           special probation be served at an inpatient facility operated or licensed by the  
7           State for treatment of substance abuse where the defendant has been accepted  
8           for admission or commitment as an inpatient. The defendant shall bear the  
9           expense of any treatment unless the court finds, upon good cause shown, that  
10           the defendant should not be required to pay any or all of the cost of treatment  
11           and orders that the cost be absorbed by the State. The judge may impose  
12           restrictions on the defendant's ability to leave the premises of the treatment  
13           facility and require that the defendant follow the rules of the treatment facility.  
14           The judge may credit against the active sentence imposed on a defendant the  
15           time the defendant was an inpatient at the treatment facility, provided such  
16           treatment occurred after the commission of the offense for which the  
17           defendant is being sentenced.

18           If the defendant is placed on probation, the judge shall impose a  
19           requirement that the defendant abstain from the use of any controlled  
20           substance without a valid prescription and obtain the education or treatment  
21           recommended by the substance abuse assessment. The judge may impose any  
22           other lawful condition of probation.

23           ...."

24           **SECTION 1.(b)** G.S. 122C-142.1 reads as rewritten:

25           "**§ 122C-142.1. Substance abuse services for those convicted of driving while ~~impaired or~~**  
26           **impaired, driving while less than 21 years old after consuming alcohol or**  
27           **drugs, drugs, or trafficking in a controlled substance.**

28           (a) Services. – An area authority shall provide, directly or by contract, the substance  
29           abuse services needed by a person to obtain a certificate of completion required under  
30           G.S. 20-17.6 as a condition for the restoration of a drivers ~~license.~~ license, or described in  
31           G.S. 90-95(h)(5a) for consideration at sentencing. A person may obtain the required services  
32           from an area facility, from a private facility authorized by the Department to provide this service,  
33           or, with the approval of the Department, from an agency that is located in another state.

34           ...

35           (i) Report. – The Department shall submit an annual report on substance abuse  
36           assessments to the Joint Legislative Commission on Governmental Operations. The report is due  
37           by February 1. Each facility that provides services needed by a person to obtain a certificate of  
38           completion shall file an annual report with the Department by October 1 that contains the  
39           information the Department needs to compile the report the Department is required to submit  
40           under this section.

41           The report submitted to the Joint Legislative Commission on Governmental Operations shall  
42           include all of the following information and any other information requested by that Commission:

- 43           (1) The number of persons required to obtain a certificate of completion during  
44           the previous fiscal year as a condition of restoring the person's drivers license  
45           under G.S. 20-17.6.
- 46           (2) The number of substance abuse assessments conducted during the previous  
47           fiscal year for the purpose of obtaining a certificate of completion.
- 48           (3) Of the number of assessments reported under subdivision (2) of this  
49           subsection, the number recommending attendance at an ADET school, the  
50           number recommending treatment, and, for those recommending treatment, the  
51           level of treatment recommended.

- 1 (4) Of the number of persons recommended for an ADET school or treatment
- 2 under subdivision (3) of this subsection, the number who completed the school
- 3 or treatment.
- 4 (5) The number of substance abuse assessments conducted by each facility and,
- 5 of these assessments, the number that recommended attendance at an ADET
- 6 school and the number that recommended treatment.
- 7 (6) The fees paid to a facility for providing services for persons to obtain a
- 8 certificate of completion and the facility's costs in providing those services.
- 9 (7) The number of substance abuse assessments requested in order to be presented
- 10 to the court at sentencing for trafficking in violation of G.S. 90-95(h)."

11 **SECTION 1.(c)** This section becomes effective December 1, 2019, and applies to  
 12 offenses committed on or after that date.

13  
 14 **PART II. SENTENCING COMMISSION/STUDY REDUCING SENTENCES FOR**  
 15 **DRUG TRAFFICKING CONVICTIONS**

16 **SECTION 2.(a)** Study. – The North Carolina Sentencing and Policy Advisory  
 17 Commission (Commission), in accordance with its duties set forth in G.S. 164-36, shall study all  
 18 of the following in regards to inmates incarcerated solely for a conviction of a drug trafficking  
 19 offense under G.S. 90-95(h):

- 20 (1) The advisability of reducing sentences imposed under structured sentencing
- 21 based on the case facts and records of inmates.
- 22 (2) The process that would be required to screen inmates for eligibility for
- 23 resentencing.
- 24 (3) The potential cost-savings and fiscal impact of an early release process for
- 25 inmates.
- 26 (4) Any other issue the Commission deems relevant to this study.

27 **SECTION 2.(b)** Report. – The Commission shall report its findings, including any  
 28 legislative recommendations, to the Joint Legislative Oversight Committee on Justice and Public  
 29 Safety by February 15, 2020.

30  
 31 **PART III. SAVINGS CLAUSE**

32 **SECTION 3.** Prosecutions for offenses committed before the effective date of this  
 33 act are not abated or affected by this act, and the statutes that would be applicable but for this act  
 34 remain applicable to those prosecutions.

35  
 36 **PART IV. EFFECTIVE DATE**

37 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes  
 38 law.