

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL 511

Senate Judiciary Committee Substitute Adopted 6/26/19

Senate Judiciary Committee Substitute Adopted 7/10/19

PROPOSED SENATE COMMITTEE SUBSTITUTE H511-PCS40524-BQ-41

Short Title: North Carolina First Step Act.

(Public)

Sponsors:

Referred to:

April 1, 2019

1 A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE JUDICIAL DISCRETION IN SENTENCING FOR DRUG  
3 TRAFFICKING OFFENSES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. This act shall be known and may be cited as "The North Carolina First  
6 Step Act."

7 SECTION 2.(a) G.S. 90-95(h) reads as rewritten:

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

10 ...

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

21 (5a) A judge sentencing a person for a conviction pursuant to G.S. 90-95(h) or  
22 G.S. 90-95(i) for conspiracy to commit a violation of G.S. 90-95(h) shall  
23 impose the applicable minimum prison term provided by this subsection. The  
24 sentencing judge may reduce the fine and sentence the person consistent with  
25 the applicable offense classification and prior record level provided in  
26 G.S. 15A-1340.17, if after a hearing and an opportunity for the district  
27 attorney to present evidence, including evidence from the investigating law  
28 enforcement officer, other law enforcement officers, or witnesses with  
29 knowledge of the defendant's conduct at any time prior to sentencing, the  
30 judge enters into the record specific findings that all of the following are met:

31 a. The defendant has accepted responsibility for the defendant's criminal  
32 conduct.

33 b. The defendant has not previously been convicted of a felony under  
34 G.S. 90-95.



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- 1           c.     The defendant did not use violence or a credible threat of violence, or  
2                 possess a firearm or other dangerous weapon, in the commission of the  
3                 offense for which the defendant is being sentenced.
- 4           d.     The defendant did not use violence or a credible threat of violence, or  
5                 possess a firearm or other dangerous weapon, in the commission of  
6                 any other violation of law.
- 7           e.     The defendant has admitted that he or she has a substance abuse  
8                 disorder involving a controlled substance and has successfully  
9                 completed a treatment program approved by the Court to address the  
10                substance abuse disorder.
- 11          f.     Imposition of the mandatory minimum prison term would result in  
12                 substantial injustice.
- 13          g.     Imposition of the mandatory minimum prison sentence is not  
14                 necessary for the protection of the public.
- 15          h.     The defendant is being sentenced solely for trafficking, or conspiracy  
16                 to commit trafficking, as a result of possession of a controlled  
17                 substance.
- 18          i.     There is no substantial evidence that the defendant has ever engaged  
19                 in the sale, manufacture, delivery, or transport of a controlled  
20                 substance or intent to sell, manufacture, deliver, or transport a  
21                 controlled substance.
- 22          j.     The defendant, to the best of his or her knowledge, has provided all  
23                 reasonable assistance in the identification, arrest, or conviction of any  
24                 accomplices, accessories, co-conspirators, or principals.
- 25          k.     The defendant is being sentenced for trafficking, or conspiracy to  
26                 commit trafficking, for possession of an amount of a controlled  
27                 substance that is not of a quantity greater than the lowest category for  
28                 which a defendant may be convicted for trafficking of that controlled  
29                 substance under G.S. 90-95(h).

30           ...."

31           **SECTION 2.(b)** This section becomes effective December 1, 2019, and applies to  
32 sentences ordered on or after that date.

33           **SECTION 3.** G.S. 90-95 is amended by adding a new subsection to read:

34           "(j)   Beginning December 1, 2020, and annually thereafter, the Administrative Office of  
35 the Courts shall publish on its Web site a report on the number of sentences modified under  
36 G.S. 90-95(h)(5a) in the prior calendar year."

37           **SECTION 4.(a)** Except as otherwise provided in this section, a person serving an  
38 active sentence imposed solely for a violation of G.S. 90-95(h), or conspiracy to commit a  
39 violation under G.S. 90-95(i), committed before the effective date of this section may file a  
40 motion for appropriate relief in accordance with Article 89 of Chapter 15A of the General  
41 Statutes for a modification of the person's sentence under the authority granted in  
42 G.S. 90-95(h)(5a), as enacted in Section 2 of this act. A person sentenced under G.S. 90-95(h)(5)  
43 is ineligible to file a motion for appropriate relief for a sentence modification under this section.  
44 The court shall require the State to respond to a motion for appropriate relief filed pursuant to  
45 this section within 60 days of the date of the filing and shall hold any hearing deemed necessary  
46 by the court within 180 days of the date of the filing. Notwithstanding any provision of Article  
47 89 of Chapter 15A of the General Statutes to the contrary, a motion for appropriate relief filed  
48 pursuant to this section may only be granted if the following conditions are met:

- 49           (1)   The motion for appropriate relief is filed within 36 months of the effective  
50                 date of this act.

- 1 (2) The person seeking a sentence modification has no other felony convictions  
2 under G.S. 90-95.  
3 (3) The person was convicted solely for trafficking, or conspiracy to commit  
4 trafficking, as a result of possession of a controlled substance.  
5 (4) The person seeking a sentence modification was sentenced for trafficking, or  
6 conspiracy to commit trafficking, of a controlled substance that was not of a  
7 quantity greater than the lowest category for which a defendant may be  
8 convicted for trafficking of that controlled substance under G.S. 90-95(h).

9 If subdivisions (1), (2), (3), and (4) of this section are met, the court shall order that  
10 the person be resentenced in accordance with G.S. 90-95(h)(5a).

11 **SECTION 4.(b)** This section becomes effective December 1, 2019, and applies to  
12 sentences ordered on or before November 30, 2019.

13 **SECTION 5.(a)** The Department of Information Technology, Government Data  
14 Analytics Center, shall conduct a statewide study to identify the criminal justice data elements  
15 related to individuals who have been charged with infractions or criminal offenses that are  
16 currently collected and maintained. The purpose of the study is to (i) identify gaps in data for use  
17 by law enforcement, judicial officials, policymakers, and other stakeholders related to the  
18 processing, detention, and adjudication of individuals charged with infractions or criminal  
19 offenses and (ii) identify solutions for improving availability and accessibility of data available  
20 to policymakers to inform public policy related to individuals who have been charged with  
21 infractions or criminal offenses. In conducting this study, the Department may seek input from  
22 agencies and organizations with relevant knowledge or information, including local or regional  
23 detention facility administrators, the Administrative Office of the Courts, the University of North  
24 Carolina at Chapel Hill School of Government, the North Carolina Sentencing and Policy  
25 Advisory Commission, the North Carolina Sheriffs' Association, and the Division of Adult  
26 Correction and Juvenile Justice.

27 **SECTION 5.(b)** The study shall examine all of the following issues:

- 28 (1) The data elements currently being collected by prisons and jails with regard  
29 to individuals who have been charged with or incarcerated for criminal  
30 offenses, and the current systems or systems planned or under development  
31 for collecting, recording, maintaining, and searching these data elements.  
32 (2) The data elements currently being collected by the courts with regard to  
33 individuals who have been charged with infractions or criminal offenses,  
34 including magistrates' records and information from the courtroom clerk such  
35 as continuances, appearances, and failures to appear, and the current system  
36 or systems planned or under development for collecting, recording,  
37 maintaining, and searching these data elements.  
38 (3) Steps that would be necessary to create a statewide program to integrate data  
39 from courts, jails, and prison data systems, including options for integrating  
40 data that currently are collected, as well as for addressing any data gaps  
41 identified, and options for making data elements available to law enforcement,  
42 judicial officials, and policymakers in an open electronic format. This  
43 evaluation should include the costs and options to fund such a statewide data  
44 integration program.  
45 (4) A review of best practices of other states that collect and integrate criminal  
46 justice data related to individuals who have been charged with infractions or  
47 criminal offenses in an open electronic format. Best practices should include  
48 solutions for privacy and data security issues, and whether the collection and  
49 integration of data is through a system maintained and operated by the court  
50 system or another State agency.

1           **SECTION 5.(c)** The Department shall report findings and recommendations to the  
2 Joint Legislative Oversight Committee on Information Technology and the Joint Legislative  
3 Oversight Committee on Justice and Public Safety no later than December 1, 2020.  
4           **SECTION 6.** Except as otherwise provided, this act is effective when it becomes  
5 law.