



HOUSE BILL 540: Drug Trafficking/Judicial Discretion & Study.

2019-2020 General Assembly

Committee:	House Judiciary. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 30, 2019
Introduced by:	Reps. Murphy, Horn, Grange, Dobson	Prepared by:	Susan Sitze
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *House Bill 540 would increase judicial discretion in sentencing for drug trafficking offenses and require the North Carolina Sentencing and Policy Advisory Commission to study the advisability of reducing sentences for drug trafficking convictions.*

[As introduced, this bill was identical to S442, as introduced by Sen. J. Davis, which is currently in Senate Rules and Operations of the Senate.]

CURRENT LAW: G.S. 90-95(h) provides mandatory minimum sentences and minimum fines for "trafficking" in controlled substances. The offenses range from a Class H felony to a Class C felony depending on the controlled substance and the amount of controlled substance.

Unless the court finds that the offender provided substantial assistance, the offender convicted for drug trafficking must receive the following minimum and maximum sentence regardless of the prior record level.

- Class C Drug Trafficking: Minimum 225 months; maximum 282 months.
- Class D Drug Trafficking: Minimum 175 months; maximum 222 months.
- Class E Drug Trafficking: Minimum 90 months; maximum 120 months.
- Class F Drug Trafficking: Minimum 70 months; maximum 93 months.
- Class G Drug Trafficking: Minimum 35 months; maximum 51 months.
- Class H Drug Trafficking: Minimum 25 months; maximum 39 months.

If the court finds "substantial assistance," the court may impose any lesser minimum and corresponding maximum sentence, or suspend the sentence and enter any sentence within the court's discretion.

Mandatory fines range from \$5,000 to \$250,000.

BILL ANALYSIS:

Section 1(a) of House Bill 540 would authorize a judge issuing a sentence for a trafficking offense to reduce the fine, or impose a prison term less than the applicable minimum prison term, or suspend the prison term imposed and place a person on probation if the sentence judge finds all of the following:

- The defendant was suffering from an addiction to a controlled substance that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- The defendant has accepted responsibility for the defendant's criminal conduct.
- The defendant has completed a substance abuse assessment.
- The defendant has a good treatment prognosis, and a workable treatment plan is available.

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The defendant must prove all of the factors by a preponderance of the evidence. The judge may order that a term of imprisonment imposed as a condition of special probation be served at an inpatient facility. The defendant shall bear the expense of any treatment unless the court finds that the defendant should not be required to pay any or all of the cost of treatment and orders the cost to be absorbed by the State. If the defendant is placed on probation, the judge shall impose a requirement that the defendant abstain from the use of any controlled substance without a valid prescription and obtain the education or treatment recommended by the substance abuse assessment.

Section 1(b) would amend G.S. 122C-142.1 to add the substance abuse assessments required in Section 1 of the bill to the services provided by area mental health authorities. This section would also require the Department of Health and Human Services to report on the number of substance abuse assessments requested in order to be presented to the court at sentencing for trafficking.

Section 2 would require the North Carolina Sentencing and Policy Advisory Commission (Commission) to complete a study and report to the Joint Legislative Oversight Committee on Justice and Public Safety by February 15, 2020. The study shall be on all of the following in regards to inmates incarcerated solely for a conviction of a drug trafficking offense:

- The advisability of reducing sentences imposed under structured sentencing based on the case facts and records of inmates.
- The process that would be required to screen inmates for eligibility for resentencing.
- The potential cost-savings and fiscal impact of an early release process for inmates.

EFFECTIVE DATE: Section 1 would be effective December 1, 2019, and apply to offenses committed on or after that date. The remainder of the act would be effective when it became law.