



SENATE BILL 404: North Carolina First Step Act.

2019-2020 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 1, 2019
Introduced by:	Sens. Steinburg, Daniel, Britt	Prepared by:	Shawn Middlebrooks Staff Attorney
Analysis of:	First Edition		

OVERVIEW: *Senate Bill 404 would allow a sentencing court to deviate from the mandatory minimum sentencing mandates for trafficking offenses if the court finds that imposition of the minimum sentence would result in substantial injustice and is not necessary for the protection of the public, and allow a person sentenced solely for trafficking or conspiracy to commit trafficking to file a motion for appropriate relief to have their sentence modified.*

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 of Senate Bill 404 would refer to the bill as "The North Carolina First Step Act".

Section 2 of Senate Bill 404 would create a new subsection, G.S. 90-95(h)(5a), to allow a judge sentencing a defendant for (i) a violation of trafficking, or (ii) conspiracy to commit a violation of trafficking, to reduce the fine, or impose a prison term less than the minimum term under this subsection, and place the defendant on probation if the court finds, among other things, that imposition of the minimum trafficking sentence would result in *substantial injustice and is not necessary for the protection of the public*.

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Section 3 of Senate Bill 404 would require the Administrative Office of the Court to publish on its website the number of sentences modified under G.S. 90-95(h)(5a).

Section 4 of Senate Bill 404 would:

- Allow a person serving an active sentence solely for a conviction of trafficking, or conspiracy to commit trafficking, to file a Motion for Appropriate Relief (MAR) to have their sentence modified pursuant to G.S. 90-95(h)(5a).
- Clarify that a person sentenced to a reduced prison term under G.S. 90-95(h)(5) for providing *substantial assistance* is not eligible to file an MAR under this G.S. 90-95(h)(5a).
- Require the MAR to be filed with 36 months of the effective date of the act
- Require the State to respond to the MAR within 60 days of the date of filing.
- Require the court to hold a hearing within 180 days of the date of filing.
- Clarify that a sentence may only be modified if all the requirements of G.S. 90-95(h)(5a) are met.

EFFECTIVE DATE: This act becomes effective December 1, 2019, and, except as otherwise provided in Section 4 of this act, applies to offenses committed on or after that date.