

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

1

SENATE BILL 404

Short Title: North Carolina First Step Act. (Public)

Sponsors: Senators Steinburg, Daniel, and Britt (Primary Sponsors).

Referred to: Rules and Operations of the Senate

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

21 (5a) The judge sentencing a person for a violation of G.S. 90-95(h) or conspiracy
22 to commit a violation under G.S. 90-95(i) may reduce the fine, or impose a
23 prison term less than the applicable minimum prison term provided by this
24 subsection, or suspend the prison term imposed and place a person on
25 probation if the sentencing judge finds and enters in the record substantial and
26 compelling reasons based on the nature of the crime, the history and character
27 of the defendant, and the defendant's chances of rehabilitation, that imposition
28 of the applicable minimum prison term would result in substantial injustice to
29 the defendant and is not necessary for the protection of the public. The
30 sentence modification authorized under this subdivision does not apply to a
31 person the judge determines occupies a position of organizer, a supervisory
32 position, or any other position of management in a continuing criminal
33 enterprise, as that term is defined in G.S. 90-95.1. The sentence modification
34 authorized under this subdivision is in addition to any sentence modification
35 authorized under subdivision (5) of this subsection.

36"



1 **SECTION 3.** G.S. 90-95 is amended by adding a new subsection to read:
2 "(j) Beginning December 1, 2020, and annually thereafter, the Administrative Office of
3 the Courts shall publish on its Web site a report on the number of sentences modified under
4 G.S. 90-95(h)(5a) in the prior calendar year."

5 **SECTION 4.** Except as otherwise provided in this section, a person serving an active
6 sentence imposed prior to the effective date of this act solely for a violation of G.S. 90-95(h) or
7 conspiracy to commit a violation under G.S. 90-95(i) may file a motion for appropriate relief in
8 accordance with Article 89 of Chapter 15A of the General Statutes for a modification of the
9 person's sentence under the authority granted in G.S. 90-95(h)(5a), as enacted in Section 2 of this
10 act. A person sentenced under G.S. 90-95(h)(5) is ineligible to file a motion for appropriate relief
11 for a sentence modification under this section. Notwithstanding any provision of Article 89 of
12 Chapter 15A of the General Statutes to the contrary, all of the following conditions apply to a
13 motion for appropriate relief filed pursuant to this section:

- 14 (1) A person seeking a sentence modification under this section must file a motion
15 for appropriate relief within 36 months of the effective date of this act.
- 16 (2) The court shall require the State to respond to a motion for appropriate relief
17 filed pursuant to this section within 60 days of the date of the filing and shall
18 hold any hearing deemed necessary by the court within 180 days of the date
19 of the filing.
- 20 (3) The court may only modify a sentence under this section if the court finds the
21 requirements of G.S. 90-95(h)(5a) have been met.

22 **SECTION 5.** This act becomes effective December 1, 2019, and, except as otherwise
23 provided in Section 4 of this act, applies to offenses committed on or after that date.