



Summary: North Carolina First Step Act (HB 511, Rep. Grange)

The North Carolina First Step Act creates a “safety valve” that allows courts to depart from the mandatory minimum for some drug trafficking offenses, and instead impose a sentence that is within the state’s structured sentencing guidelines based on the classification of the offense (e.g., Class C, D, etc.). The bill was passed by the North Carolina General Assembly on June 17, 2020, and takes effect on December 1, 2020.

Who it would help: People convicted in North Carolina state courts of drug trafficking under NC G.S. 90-95(h) or conspiracy to commit drug trafficking under NC G.S. 90-95(i), who are facing 25-month mandatory minimum sentences only, and who meet the eligibility requirements below. **The safety valve is not retroactive and does not help people sentenced before December 1, 2020.** However, it does allow some people already serving mandatory minimum sentences for the smallest drug amounts that trigger those sentences under G.S. 90-95(h) to file motions in court for sentence reductions, if they meet certain criteria.

What the new law does: If a person facing a mandatory minimum drug sentence in North Carolina state court seeks to have the safety valve applied and receive a shorter sentence, the prosecution gets an opportunity to oppose a shorter sentence. The prosecution is allowed to put police officers on the stand and introduce any other evidence they would like about the person prior to sentencing – including evidence about other arrests or conduct. After that, a person only qualifies for the safety valve if ALL of the following criteria are met:

1. The defendant has accepted responsibility for the crime;
2. The defendant does not have a prior felony drug conviction under G.S. 90-95;
3. The defendant did not use violence, threats of violence, or possess a firearm or a weapon in the commission of the offense they’re currently being sentenced for;
4. The defendant did not use violence, threats of violence, or possess a firearm or a weapon in the commission of any other crime, no matter when that crime was committed;
5. The defendant has admitted they have a substance abuse disorder and has successfully completed a court-approved drug treatment program;
6. Imposing the mandatory minimum would result in substantial injustice;
7. Imposing the mandatory minimum is not necessary for public safety;
8. The defendant is being sentenced **solely** for trafficking, or conspiracy to commit trafficking **as a result of possession**;
9. There is **no** substantial evidence that the defendant has **ever, at any time**, engaged in the sale, manufacture, delivery, or transport of a controlled substance **or** intent to sell, manufacture, deliver, or transport a controlled substance;
10. The defendant, to the best of their knowledge, has provided all reasonable assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals; and



11. The defendant is being sentenced for trafficking or conspiracy to commit trafficking for **possession** (not sale, manufacture, delivery, transport, etc.) of the drug amount that is within the lowest category under G.S. 90-95(h) – in other words, only those serving mandatory minimums for the smallest drug amounts that trigger mandatory minimum sentences under G.S. 90-95(h) are eligible.

Limited reconsideration of sentences: Some people who were sentenced for drug trafficking before the bill's effective date (i.e., on or before November 30, 2020) can file a motion for appropriate relief (MAR), if ALL of the following conditions are met:

1. The motion is filed within 36 months of the bill's effective date (December 1, 2023);
2. The person has no prior felony drug convictions under G.S. 90-95;
3. The person is convicted solely for trafficking, or conspiracy to commit trafficking, as a result of drug **possession** (not sale, manufacture, delivery, transport, etc.);
4. The person was convicted of drug trafficking or conspiracy to commit drug trafficking of an amount that is within the lowest category under G.S. 90-95 – in other words, only the smallest drug amounts that trigger mandatory minimum sentences under G.S. 90-95(h).
5. The person did NOT already receive a reduction in sentence for providing substantial assistance in the identification, arrest, or conviction of any co-conspirators.

NOTE: If you believe or a loved one believe that you qualify for a reconsideration of sentence under the First Step Act, you should contact the public defender's office or an attorney and seek legal help. FAMM cannot provide people with legal help or advice in seeking a sentence reduction.

Other provisions: Beginning December 1, 2021, and every year after that, the Administrative Office of the Courts must publish online an annual report of the number of cases where the court departed from the mandatory sentence by using the safety valve.