



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

What the bill would do: The North Carolina First Step Act would create 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 structural sentencing guidelines based on the classification of the offense (e.g. Class C, D, etc.).

FAMM does not support this bill. Because of the nature of the eligibility requirements, it seems likely that no one will be able to become eligible for relief.

Who it would help: People convicted 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. 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 for sentence reductions, if they meet certain criteria.

Status: *This bill is not yet law.* To become law, it must go through the committee process, pass through both the North Carolina Senate and House of Representatives, and be signed by the governor. If it becomes law, it will take effect December 1, 2019.

Who is eligible: If a person seeks to have the safety valve applied, 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;
6. The defendant has already successfully completed a court-approved drug treatment program;
7. Imposing the mandatory minimum would result in substantial injustice;
8. Imposing the mandatory minimum is not necessary for public safety;
9. The defendant is being sentenced **solely** for trafficking, or conspiracy to commit trafficking as a result of possession;
10. 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;



11. 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;
12. 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: People who were sentenced for drug trafficking before the bill's effective date (i.e., before December 1, 2019) 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, 2019);
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).

Other provisions:

- If a person seeks the benefit of the safety valve, the bill gives the district attorney the opportunity to present evidence, including evidence from law enforcement or witnesses, about the defendant's conduct at any time prior to their sentencing.
- 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.