

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1463

Short Title: Assault/Rape of Child by Parent or Guardian.

(Public)

Sponsors: Representative Sutton.

Referred to: Judiciary III.

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN ENHANCED SENTENCE FOR CERTAIN CRIMINAL OFFENSES COMMITTED AGAINST A VICTIM WHO IS FIFTEEN YEARS OLD OR YOUNGER IF THE PERSON CONVICTED IS THE VICTIM'S LEGAL CUSTODIAN, GUARDIAN, PARENT, OR OTHER PERSON STANDING IN LOCO PARENTIS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 81B is amended by adding the following new sections to read:

"§ 15A-1340.60E. Enhanced sentence if defendant is convicted of assault on a person 15 years of age or younger and the defendant is the victim's legal custodian, guardian, parent, or other person standing in loco parentis.

(a) Unless the conduct is covered under some other provision of law providing greater punishment, if a person is convicted of an offense under G.S. 14-32, 14-32.4, 14-33, 14-34, 14-34.1, and it is found as provided in this section that: (i) the person committed the offense against a victim who was 15 years of age or younger at the time of the offense and (ii) the person is the victim's legal custodian, parent, guardian, or other person standing in loco parentis, then the person is guilty of a misdemeanor or felony that is one class higher than the offense for which the person was convicted.

(b) An indictment or information for the offense shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the offense against a victim who was 15 years of age or younger at the time of the offense and that the defendant is the victim's legal custodian, parent, guardian, or other person standing in loco parentis. One pleading is sufficient for all offenses that are tried at a single trial.

(c) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense unless the defendant pleads guilty or no contest to the issues. The issues shall be

1 presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads
2 guilty or no contest to the offense but pleads not guilty to the issues set out in subsection
3 (a) of this section, then a jury shall be impaneled to determine the issues.

4 (d) Subsection (a) of this section does not apply if the age of the victim or the
5 relationship of the defendant to the victim is needed to prove an element of the offense.

6 **"§ 15A-1340.60F. Enhanced sentence if defendant is convicted of rape or sex**
7 **offense of a person 15 years of age or younger and the defendant is the**
8 **victim's legal custodian, parent, or other person standing in loco**
9 **parentis.**

10 (a) Unless the conduct is covered under some other provision of law providing
11 greater punishment, if a person is convicted of first or second degree rape or first or
12 second degree sexual offense under Article 7A of Chapter 14 of the General Statutes
13 and it is found as provided in this section that: (i) the person committed the offense
14 against a victim who was 15 years of age or younger at the time of the offense and (ii)
15 the person is the victim's legal custodian, parent, guardian, or other person standing in
16 loco parentis, then the person is guilty of a felony that is one class higher than the felony
17 for which the person was convicted.

18 (b) An indictment or information for the felony shall allege in that indictment or
19 information or in a separate indictment or information the facts set out in subsection (a)
20 of this section. The pleading is sufficient if it alleges that the defendant committed the
21 felony against a victim who was 15 years of age or younger at the time of the felony and
22 that the defendant is the legal custodian, parent, guardian, or other person standing in
23 loco parentis. One pleading is sufficient for all felonies that are tried at a single trial.

24 (c) The State shall prove the issues set out in subsection (a) of this section
25 beyond a reasonable doubt during the same trial in which the defendant is tried for the
26 felony unless the defendant pleads guilty or no contest to the issues. The issues shall be
27 presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads
28 guilty or no contest to the felony but pleads not guilty to the issues set out in subsection
29 (a) of this section, then a jury shall be impaneled to determine the issues.

30 (d) Subsection (a) of this section does not apply if the age of the victim or the
31 relationship of the defendant to the victim is needed to prove an element of the felony."

32 **SECTION 2.** This act becomes effective December 1, 2005, and applies to
33 offenses committed on or after that date.