

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 1039**

Short Title: Increase Penalties/2nd Degree Rape.

(Public)

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Sponsors: Senators Jenkins; and Brock.

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Referred to: Judiciary I.

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March 24, 2005

A BILL TO BE ENTITLED  
AN ACT TO STRENGTHEN PENALTIES FOR COMMITTING SECOND-DEGREE  
RAPE OR SECOND-DEGREE SEXUAL OFFENSE.

Whereas, according to the 2000 Status of Women in North Carolina, first-degree rape carries a mandatory sentence and requires that the prosecutor show that the victim suffered serious injury or that a weapon was involved; and

Whereas, also according to the 2000 Status of Women in North Carolina, second-degree rape carries a sentence of 12 to 14 years and requires the State to provide that sex was forced and without consent; and

Whereas, according to the State Bureau of Investigation, in almost 80 percent of reported cases in both 1997 and 1998 the offender used hands, feet, and/or fists as means of force; and

Whereas, according to North Carolina law, lack of consent is not sufficient grounds for conviction; Now, therefore,

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-27.3 reads as rewritten:

**"§ 14-27.3. Second-degree rape.**

(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

(1) ~~By force and against~~ Against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class ~~C~~B2 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of

1 the rape, nor shall the person have any rights related to the child under Chapter 48 or  
2 Subchapter 1 of Chapter 7B of the General Statutes."

3 **SECTION 2.** G.S. 14-27.5 reads as rewritten:

4 **"§ 14-27.5. Second-degree sexual offense.**

5 (a) A person is guilty of a sexual offense in the second degree if the person  
6 engages in a sexual act with another person:

7 (1) ~~By force and against~~Against the will of the other person; or

8 (2) Who is mentally disabled, mentally incapacitated, or physically  
9 helpless, and the person performing the act knows or should  
10 reasonably know that the other person is mentally disabled, mentally  
11 incapacitated, or physically helpless.

12 (b) Any person who commits the offense defined in this section is guilty of a  
13 Class ~~C~~B2 felony."

14 **SECTION 3.** Part 2 of Article 81B of Chapter 14 of the General Statutes is  
15 amended by adding a new section to read:

16 **"§ 15A-1340.16E. Enhanced if defendant is convicted of rape or sexual offense and**  
17 **the defendant used "date rape drugs" in the commission of the crime.**

18 (a) If a person is convicted of an offense under G.S. 14-27.2, 14-27.3, or 14-27.4,  
19 or 14-27.5, and it is found as provided in this section that: (i) the person committed the  
20 felony by using "date rape drugs", then the person shall have the minimum term of  
21 imprisonment to which the person is sentenced for that felony increased by 60 months.  
22 The maximum term of imprisonment shall be the maximum term that corresponds to the  
23 minimum term after it is increased by 60 months, as specified in G.S. 15A-1340.17(e)  
24 and (e1).

25 (b) An indictment or information for the violation of G.S. 14-27.2, 14-27.3, or  
26 14-27.4 shall allege in that indictment or information the facts set out in subsection (a)  
27 of this section. The pleading is sufficient if it alleges that the defendant committed the  
28 felony by using "date rape drugs." One pleading is sufficient for all violations of  
29 G.S. 14-27.2, 14-27.3, or 14-27.4 that are tried at a single trial.

30 (c) The State shall prove the issues set out in subsection (a) of this section  
31 beyond a reasonable doubt during the same trial in which the defendant is tried for the  
32 felony unless the defendant pleads guilty or no contest to the issues. If the defendant  
33 pleads guilty or no contest to the felony but pleads not guilty to the issues set out in  
34 subsection (a) of this section, then a jury shall be impaneled to determine the issues.

35 (d) Subsection (a) of this section does not apply if the evidence of the use of the  
36 "date rape drug" is needed to prove an element of the felony or if the person is not  
37 sentenced to an active term of imprisonment. Subsection (a) of this section does not  
38 apply if the evidence of the use of the "date rape drug" is needed to prove an element of  
39 the felony or if the person is not sentenced to an active term of imprisonment.

40 **SECTION 4.** This act becomes effective December 1, 2005, and applies to  
41 offenses committed on or after that date.